

LONDON Printed for John Bollinger and Grange Dames



London Printed, for Iohn Bellinger and George Dawes



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Jure Maritimo NAVALI: OR, A TREATISE

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Affairs Maritime

ANDOF

Commerce.

In Three BOOKs.

Che Chird Edition Enlarged.

By Charles Molloy.

LONDON,

Printed for John Bellinger in Cliffords-Lan Lane, against the West Door of St. Dwost and Church; and George Dawes in Chancery Lane, against Lincolns-Inn Gate. 1682.



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1236:10

To the Right Honourable

LAWRENCE Viscount Hyde of Kenellworth, Baron of Wooten Basset Primier Commissioner of the Treasury, Gentleman of His Majesties Bed-Chamber, and one of the Lords of His Majesties most Honourable Privy Council.

And to the Right Honourable

missioner for Executing the Office of Lord High Admiral of England, and one of His Majesties most Honourable Privy Council.

My Lords,

Know it is a thing Sacred to write either of Laws or Histories, they not being to be touched or medled, but with an upright mind and undefiled hands; (and for that cause their Repositories of Old were always in the Sacred Treasuries of Princes, or in the secret recesses of Temples, as the most undoubted securities of those that went a 2 before,

before, and the firmest Guarrantees of them that should succeed) yet to Eternize (though not with that perfection) the humblest of my Service to Your Lordships, have I presumed to compile and consecrate this Naval Tract of the Laws to your Noble Protection: The consideration of your eminent Virtues, not only by descent from those great Pillars of Empire and Loyalty, your Predecessors; but your most incomparable and indefatigable Industry and Knowledge in matters Publick, hath rendred you not only serviceable to the Crown, but truly esteemed in the hearts of every good and upright man: This Nation now reaping the mighty advantages under your Influence, in reference to Commerce and Navigation, which she hath so many Ages laboured for.

Vouchsafe, best of Friends, to the best of Kings, and Good of his People, the Acceptance of this rude Sea=Skiff from the meanest of your Servants, who, though deficient in every thing that might contribute to the perfection of a Piece sit for so Noble a Favour; yet wants he not a heart

to let the World know he is.

MY LORDS,

Your Lordships

Most humble Servant

Charles Molloy.

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HE Wisdom of God is highly to be admired, who hath not endowed the other living Creatures with that Soveraign Perfection of Wisdom, but hath secured and provided for them by natural Muniments from affault and peril and other necessities: But to Man, he formed him naked and frail, because of furnishing him with Wildom, Understanding, Memory, and Sense to govern his Actions, endowing him with that pious affection of defiring Society, whereby one is inclined to defend, love, cherish, and afford mutual aid to each other: Nor hath he in Lattantius, no less wonderful manner (infinitely transcending lib. 9. all humane wisdom and understanding) created the material World to be subservient to his Being and Well-being: Yet without humane Understanding and Reason did he not build a Ship, raise a Fort, make Bread or Cloth; but these came to pass only by humane Arts and Industry, in which by the Revolutions of the Celestial Bodies, Times and Seafons, Materials and other necessaries are brought forth, by the alteration of which men in their proper seasons reap the fruits of their Labour; so that there is no Society, * Nation, Country or King- * Seneca 4. de dom but stands in need of another: hence it is Beneficius, cape that men knowing each others necessities, are invited to Traffick and Commerce in the different parts and immensities of this vast World to supply each others necessities, and adorn the conveniencies of humane life.

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And as God hath so ordered this wonderful dependence of his Creatures on each other, fo hath he by a Law Immutable provided a Rule for Men

in all their actions, obliging each other to the performance of that which is right, not only to Ju-* Leg. ut vim. stice *, but likewise to all other Moral Vertues; D. de just. & jur. n. 7, & 8. the which is no more but the dictate of right Reason founded in the Soul of Man, shewing the necessity to be in some act by its convenience and disconvenience in the rational Nature in Man, and consequently that it is either forbidden or commanded by the Author of Nature, who is the Eternal Creator of all things. And as God hath imprinted this Universal Law in the Minds of all men, so hath he given men power (Society being admitted) to establish other Laws which proceed from the Will, the which is drawn from the Civil Power, that is, from him or them that rule the Commonwealth or Society of Freemen united for their common benefit, (which is called the Laws of Nations) and which by the will of all or many Nations, hath received force to oblige, and is || proved by a continued use and

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Pulquez 2. Controv. 54. 4.

Skilful Men.

Florentius 2. part, tit. 22. feet. s. Cicero offic. lib. II. ex Panetia.

Now by the Laws of Nature every man is bound to profit another in what he can *, nor is the same only lawful but commendable; so true was that Leg. Servus. D. saying, Nothing is more serviceable to man than de Serv. export. man ||: But if man shall neglect this immutable Law in the aiding and affifting his fellow Citizen, and inquire and dispute why God hath laid this necessity upon him; and when Opportunity gives leave to take the benefit of Wind or Tide, (in order to his furnishing himself or Neighbour with those things that adorn humane life) to dispute the Causes of their flux and reflux, and how they vary and change; he not only offends the Laws of Nature, but assumes a power of destroying Society, and consequently becomes (at the least) a wilful Tranf-

testimony of Authentick Memorials of Learned or

Transgressor of the Laws of Nations.

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And though the Eternal Power hath fo Established this necessity in Mankind, that every man should stand in need of another man, vet so great a Providence is over Industrious men, that scarce any man not disabled by Nature or Accident, Sickness. Impotency, and the like, but by his Industry and pains may earn more than would supply his necesfities; and so much as any man gets by being truly Industrious above what supplies his necessities, is fo much beneficial to himself and Family, as also an enriching to that Kingdom or State where he relides: from whence it is, that all Mankind (prefent or to come) are either Traders by themselves or others; and the ends defigned by Trade and Commerce, are Strength, Wealth and Imployment for all forts of people, (where the same doth most flourish) the end tending to the Advancement, * cole 2. Inst. Opulency, and Greatness of such a Kingdom or fol. 28.1 State.

Constantinople (the Throne once of Christendom) Anno 1453. having been fack't by Mahomet the Second, became Vide Knowles H flory of that a place of desolation as well as horror, yet he by Monarchy. granting a free Trade and Religion, foon after repeopled that great (but unhappy) Spot. Silemus tread amiss in following the steps of his Victorious Predecessor, when having the like success on Tauris and Grand Cairo, he translated the Persian and Egyptian Artificers and Traders to that repeopled City, following the Example of the Roman Virtues. Nor did our Victorious Third Edward deem it an Act unbeseeming his great Wis- mirror, can. s. dom, when he brought in the Walloons, whose Sect. 2. Industry soon Established the Woollen Manufa- 11 Ed.3. cap.3. cture, he vouchsafing to give no less a security for the enjoying their then granted Immunities and

Privi-

* Vide Cambbeth, An. 1 568.

Histor. Belg. lib. 3.

Priviledges, than his own Royal Person. Nor did that politick Princess * thut her Ears from embraden's Q. Eliza- cing the Offer of those distressed Burgundians (after the Example of her Great and Royal Predecessor) who fought refuge in her Dominions from the ri-A. E. Meteran, gid severity of the long-Bearded Alva, who planting themselves by her appointment at Norwich, Colchefter, Canterbury, and other Towns, have of those places (then only habitations for Beggars) raised them now in competition with (if not excelling) all, or most of the Cities in England, for Riches, Plenty and Trade. Nor need we run into the History of earlier Times to give an account of the many Kingdoms and States that have rifen by Industry and Commerce; 'tis enough if we cast our Eves on our Neighbour the Hollander, a place by relation of Ortelius, not much bigger than Tork-(hire, and such a Spot, as if God had reserved it as a place only to dig Turf out of, for the accommodating those Countries wherein he hoards up the miseries of Winter, it affording naturally not any one Commodity of use, yet by Commerce and Trade (the Daughters of Industry) it is now become the Store-house of all those Merchandizes that may be collected from the rifing to the fetting of the Sun, and gives those People a name as large and high as the greatest Monarch this day on Earth: Nor need we pass out of Christendom to find Examples of the like, when Venice, Genoa, Lubeck, Embden, and the rest of the Hansiatick Towns (once the Marts of the World, till Sloth, Luxury, and Ambition got within their Walls, and drove it to Ports of Industry) that have fince kist and embrac't it, the which this Isle by the Influence of his Royal

> Majesty hath been no small sharer in. Hence it is, that Trade and Commerce are now

become

become the only Object and Care of all Princes and Potentates, its Dominion not being acquired by the ruful face of War, whose footsteps leave behind them the deep impression of misery, devastation and poverty, they knowing the return of Commerce is Riches, and Plenty of all things conducing to the benefit of humane life, and fortifying their Countries with Reputation and Strength.

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It was Trade that gave occasion to the bringing Anno 1656, of those mighty Fleets to Sea, as if God had left it 1672, 1673 to them to decide by force (wherein no Age or Time can witness the like) the Empire of the World: Hence it was, (the advantages being found which arise by Commerce) that Navigation got its birth into the World, reducing the feveral Nations on the Earth by that means to be even as one Common Family; and when in this Isle we were even in the state of Canibals, it brought in a People that instructed us in Arts, Policies and Manners, cambden. and taught us actions no less vertuous than those themselves followed; And although long and difficult it was before that Mighty People could be brought over to have thoughts of the advantages Quellus omnis indecerus patriarising from Commerce and Navigation (they only bus, says Livy, propounding to themselves Blood, Slaughter, Con-lib. 1. Dec. 3. quest, the Riches and Spoils of Nations;) but Though they when they entred into the Carthaginian War, a had 100 roquarrel with a People not worth the opposition of a flrated Ships, Tribune (as they thought) but finding that neither and 75 Gallies under Cajus Tribune nor Conful, no nor the Flower of the Ro- Daillus and his man Army was able to withstand them, or to pre- Collegue, as Povent the Invalion of their Country, and then in the very bowels of the same, put it to the Question, Rome or Carthage Mistress of the World, they began to confider whence and from what causes those unknown Africans should withstand

the Conscript Fathers and power of Rome, and should dare to dispute with those that had led so many Captivated Kings in Triumph, and brought so many Haughty Nations to truckle under their Victorious Eagles, at last they found it was Commerce and Navigation that gave power and force to that Mighty People; then it was that Rome began to know that Rome could not be Rome without a Naval force; the which, and to redeem their bleeding Honour they foon hastened and equipt, great as their Competitors; afterwards Argentum being won, Carthage became no more impregnable, after which with Peace they plowed the * Now the im- Neighbouring Streights to Tinges *, Gades, and the Herculean Streights; nor could any thing be too difficult afterwards, till they arrived on the British shore, where beholding her ample Bays, Harbours, Rivers, Shores and Stations (the Jewels and Ornaments of that Spot, and having made a Conquest of the same) they soon cultivated into our rude Natures the spirit of Commerce, teaching and instru-Cting us in those polite ways that fortifie a Kingdom by Naval force, as the Standard and undeniable marks of Empire; and by aiding and teaching us in the driving on a continued and peaceable Tract of Commerce, we have fathomed the unknown depth of the Indian Shores, uniting as it were Extremes, made the Poles to kiss each other, teaching us thereby, that it was not the vast Immensities of Earth that created Empire, but Situation accompanied with Industry, Commerce and Navigation that would enable a People to give Laws to the World: In the pursuit of whose Vertues this Nation hath not been wanting, and of following their great Directions in the enlarging our Fleets; for they, when tley advanced their Eagles on the British Shore,

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portant City of Tangier.

found us not then without Ships of Force, time having not been so envious to this Island, as to eat out those Records wherein mention is made * that * Strabo, lib. 3. the Britains accompanied the Cymbrians and Gaules in their memorable Expedition to Greece, long before the Incarnation of the Worlds Saviour; and it was from that Center that the Mighty Cafar first drew his Line, and took thoughts of plowing the Ocean to find out that Warlike People to face his Victorious Legions, when, having landed, and finding a place adorned by Nature beyond any thing that could be called great, taught us to maintain that Superiority of Dominion, that no Neighbouring Nation should frequent our peaceable Shores, and those Merchants that came, affigned Gaules Town them places to drive their Commerce and Traffick, the Mart for jealous that any Neighbouring Rival should kiss those Neighhis beloved Britannia but a Roman, and for whom bouring Merchants. he fetcht so long and tedious a March; thus in our Infancy teaching us both Defence and Commerce. And when that mighty Empire began to decline, and those remaining Romans began to moulter and mix among the Natives, and to become as one People again, then Sloth, Luxury and Idleness (the fore-runners of ruine) invaded our Shores by a fatal stupidity, it suffered our floating Castles (Bulwarks of the Kingdom) to rot in their neglected Brine, and our Ports to be surveyed by Foreign people; which supine negligence soon subjected us a prey to our ambitious Neighbors, who no fooner finished their Conquest, and sheath'd their devouring Swords, but each (as if inspired by the very Abrahamus Genius of the place) equipt out Fleets great as their Windochus de Competitors, to secure what they had so dearly prises Anglowon, of whom Story makes mention of the mighty written origi-Arthur, no less famous in his Warlike Archieve- nally by Mr.

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* Inferted in Leges Edvardi, and afterwards confirmed by the Norman Conqueror.

Mr. Selden's Mare Clausum, lib. 2. cap. the 10. to the 16.

Acro 1035. fol. 409. Selden's Mare Clausum, lib. 2. cap. II.

ments, than in leading his Squadrons as far as Iceland, bringing those Northern People to pay obeyfance to his Victorious Standard, and acknowledge him as their Supreme Lord even from the British to the Russian Tracts, and by him left to the famous Edgar*, who no sooner found his undoubted Right, but refolved to vindicate that Dominion which his Royal Predecessor had with so much glory acquired, and with fo great care communicated and remitted down to his Successor: With no less a number than four hundred Sail of Ships did that mighty Prince at once cover the Neighbouring Ocean, making them the Portcullis of this Isle and the adjacent Seas, by which he vindicated his Dominions on the Waters, and gave Laws in the Chambers of his Empire: Nor did his Successors Canutus, (whom Record makes mention that having laid that ancient Tribute called Danegeld, for the guarding of the Seas and Soveraignty. of them, was emblematically exprest sitting on the shore in his Royal Chair while the Sea was flowing, Matthewwelm. Speaking, Tu mez Ditionis es, & terra in qua Cedeo ett, ac.) Egbert, Althred, Ethelfred, forget the affertion of their great Predecessors Dominion and Soveraignty of the same under no lower a stile than Supreme Lords and Governours of the Drean, furrounding the Britis Shoze, never fo much as contested by any Nation whatsoever, unless by those that attempted the Conquest of the entire Empire, in which that became subject to Fate as well as the other of the Land: Nor did the succeeding Princes also of the Norman Race ftart or wave that mighty advantage in their fucceffive Claims, and maintaining their Right to the adjacent Sea; as appeared not long after by that famous Accord made between Edward the First, and

and the French King Philip the Fair, calling * him * Coke 4. Inst. to an account for Piracies committed within the fol. 142. British Seas; the Submission of the Flemmings in open Parliament in the Second Edward's Reign; and the Honour or Duty of the Flag, which the politick King John had above Four hundred years fince challenged by that memorable Ordinance at Hasting | there decreed to take place universally, I Inter Leges not barely as a Civility, but as a Right, to be Marinas sub fine anni Regni paid cum debita reverentia, and persons refusing to Regis Johan. 2. be affaulted and taken as Enemies; the same not only to be paid to whole Fleets bearing the Royal Standard, but to those Ships of Priviledge that wear the Princes Enfigns or Colours of Service: Nor was this barely a Decree written, but nobly afferted by a Fleet of no less than 500 Sail in a Voyage Royal of his, wherein he failed for Ireland, in his way commanding all Vessels which he met in the Eight circumfluent Seas to pay that Duty and Acknowledgment. Nor was the Third Edward flow in following the steps of his wife Predecessors, when he equipt out a Fleet of no less than 700, (though on another occasion) with 200 of which he vanquished a Fleet of twice the number before Calice, to the loss of 30000 French. Nor did our Victorious Conquerour of the Sepulchre the Great Richard, in his return from the Holy Land want a Navy Royal to attend him home, by the force of which he took and destroyed near 100 more Ships of the French. And look we but into the mighty Actions of the succeeding Princes, we shall find that all that ever defigned Empire were zealous in the encouragement of Navigation, looking on that Axiom as undeniable, * Qui Mare tenet, eum * cic. ad Attic. necesse esse rerum potiri, and that without which the 1. 10. E2. 7. British Soveraignty is but an empty Title.

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Nor ought alone the Praises of those great Monarchs, whose mighty care had always been to preserve the Reputation of their Empire in their Maritime preparations, to be remembred; but also those of our Inhabitants, who always have been as industrious to follow the encouragement of those Princes under whom they flourished; and who with no less Glory and timely application in Traffick, did constantly follow the examples of those of Genoa, Portugal, Spaniards, Castillians and Venetians, whose Fame in matters of Commerce ought to be inrolled in Letters of Gold, fince the Ages to come, as well as present, having been doubly obliged to their memory, the third of which making use of a discontented Native of this Isle, the Famous Columbus who prompted by that Genius that naturally follows a Native wife man, discovered a New World, in whose Expedition he fathomed unknown Paths, and detected the Antillus, Cuba and Jumaca, &c. and the Terra Firma of the American Shore, who taking his Conjectures from the spiring of certain Winds from the Western Points, by strong impulse, accompanied with that Philosophy he attained to, concluded some Continent must needs be hid in those unknown Parts; his Service being first offered to his Prince | and refused, he was soon after entertained, purely on campanel, Hist, the Faith of that Noble Princess Isabella of Spain, who for 17000 Crowns (for which she engaged her fewels) received not long after as many Tuns of Treasure, and to her Husband's own use, in eight or nine years time came above Fifteen hundred Thousand of Silver, and Three hundred and fixty Tuns of Gold. Thus Ingenuity encouraged, though in one fingle person, hath occasion-

ed Wonders, and from a small Kingdom (as Spain)

Born in England, but refident at Genoa.

Hen. 7.

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it hath fince raised its head in a condition of bringing all those many Kingdoms and vast Immensities of Earth which they possess under their Protection, putting them once on thoughts of no less than an Unibertal Monarchy: We need only mention Sebastian Chabot a Native of Bristol, who discovered Florida and the Shores of Virginia, dedicated to that Virgin Princes Elizabeth; Thorn, Elliot, Owen, Gwyned, Hawkins, Cavendish, Furbisher, Davis, Stadfon, Raleigh, and the incomparable Drake, who was the first (agreed universally) of any Mortal to whom God vouchfafed the stupendious Atchievement of incompassing not this New World alone, but New and Old together, twice embraced by that mighty Man, who first making up to Nombre de Dios, got fight (with tears of joy) of the Southern Seas, the which in five years after he accomplished, passing through the Magellan Streights towards the other Indies, and doubling the famous Promontory, he circumnavigated the whole Earth.

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Nor ought that truly worthy Captain Sir John Norborough be precluded from having place after the mighty Drake, he having not long fince passed and repassed the Magellan Streights, by which that worthy Person hath personmed that Atchievement which was never yet done by any Mortal before. To reckon up the particular Actions of John Oxenham (a sharer in that mighty performance of Drake) of his drawing his Vessel up to Land, and covering the same with boughs, passed the unknown paths of Land from Nombre de Dios to the South Sea, and there building a Pinnace, enters the Isle of Pearls, and from the Spaniards takes a Treasure almost beyond credit; of the indefatigable diligence of Willoughby, Burroughs, Chanceler, Button, Buffin, Furbisher, James Middleton, Gilbert Cum-

berland, who plowed up the North-East and North-West Cathaian and China passage; of Jones and Smith, whose Fortune and Courage was great in those Parts; of Poole, who found out the Whale Fishing; of Captain Bennet the first Discoverer of Cherry-Island; Gillian and of Pett, and Jackman that passed the Vaigates, Scythian Ices, and the River of Ob, as far as Nova Zembla; nor of the Famous Davies and Wood, who had penetrated to 86 degrees of Latitude, and almost set their feet on the Northern Pole, and for truly valiant the famous Monk, Blake, Lawfon, Mimes, Sandwich, Offery, and the never to be forgotten Spragg, and living his Royal Highness York's Victorious Duke, and the brave Rupert, Men whose Courage and glorious Actions as well in Battles as in the atchieving of Discoveries, and pointing out to places for an immense Improvement in Navigation and Commerce, ought to be inrolled in the Temple of Fame as Monuments to fucceeding Ages, of their mighty and laborious Travails and Industry. The confideration of all which gave some sparks of encouragement to the writing the ensuing Tract, especially when reflecting that among all Nations there is a Common Law which governs the mighty thing of Navigation and Commerce, I had some impulfes more than ordinary to induce me to the same, especially at a time when Navigation and Commerce were never (from the erection by Divine instinct that mighty Prototype the Ark to this prefent Age) in greater esteem than now, and by which we have found valt and great easements and discharges from those Royal and just Rights and Dues which now and of Old were justly due to those that Govern'd this Empire; therefore ought by all ways and means to be fortified and encouraged,

raged, be it by whatfoever Art, Science or thing that does in the least point out towards the same. Nor was it then wanting in thoughts to promote and incite the Professors of the Law, raising and stirring up their Genius to the advancement of the Law in this point; and though I believe many have wisht that such a thing might be, yet none that I can find have ever yet attempted the same: nor is it possible, unless those things which are by Law constituted and known, be rightly separated from those that are natural; for natural Law is immutable and always the fame, therefore may eafily be collected into Art. But things that come from Constitution, because they often vary and change, and are divers in divers places, are put without Art, as other Precepts of Laws politive or municipal; hence it was that the Constitutions and Laws of Rhodes, for their Justice and Equity, got footing amongst the Romans as well as amongst other the bordering People on the Mediterranean. Rhodiorum usq; rerum memoriam disciplina Navalis Manil. pro Oris & gloria remansit; yet when they, as well as the tat. Leg. Romans, became subject to Fate, they then remained only as Examples of Justice and Reason for others to imitate and follow: An obsequious Adorer of which was the great Justinian, who caused them to be inferted into the Civil Law 5 and though they obtained a place amongst others of the Ancient Romans as well as the Modern, yet have they not all received by cultom fuch a force as may make them Laws, but remain only as they have the Authority in shew of reason, which binds not always alike, but varies according to cir-

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And Mr. Serjeant Calis must be fo understood of the ancient Civil and Modern Roman Law reduced into one, and they are not now two Laws, one Civil, and the other Imperial, but only one, that is, the Imperial. Vide his Reading on the Statute of Sewers,

Sect. 1. fol. 31. cumstance of time, place, state, age, and what other

berland, who plowed up the North-East and North-West Cathaian and China passage; of Jones and Smith, whose Fortune and Courage was great in those Parts; of Poole, who found out the Whale Fishing; of Captain Bennet the first Discoverer of Cherry-Island; Gillian and of Pett, and Jackman that passed the Vaigates, Scythian Ices, and the River of Ob, as far as Nova Zembla; nor of the Famous Davies and Wood, who had penetrated to 86 degrees of Latitude, and almost set their feet on the Northern Pole, and for truly valiant the famous Monk, Blake, Lawson, Mimes, Sandwich, Offery, and the never to be forgotten Spragg, and living his Royal Highness York's Victorious Duke, and the brave Rupert, Men whose Courage and glorious Actions as well in Battles as in the atchieving of Discoveries, and pointing out to places for an immense Improvement in Navigation and Commerce, ought to be inrolled in the Temple of Fame as Monuments to fucceeding Ages, of their mighty and laborious Travails and Industry. The confideration of all which gave some sparks of encouragement to the writing the ensuing Tract, especially when reflecting that among all Nations there is a Common Law which governs the mighty thing of Navigation and Commerce, I had some impulfes more than ordinary to induce me to the same, especially at a time when Navigation and Commerce were never (from the erection by Divine instinct that mighty Prototype the Ark to this prefent Age) in greater esteem than now, and by which we have found vast and great easements and discharges from those Royal and just Rights and Dues which now and of Old were justly due to those that Govern'd this Empire; therefore ought by all ways and means to be fortified and encouraged,

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And Mr. Serjeant Calis must be so understood of the ancient Civil and Modern Roman Law reduced into one, and they are not now two Laws, one Civil, and the other Imperial, but only one, that is, the Imperial. Vide his Reading on the Statute of Sewers. Sect. 1. fol. 31.

cumstance of time, place, state, age, and what other

conveniences or inconveniences meets with it; nor have those Laws, instituted at Oleron, obtained

The Articles of Enquiry annexed to them in 12 Ed. 3.

The Inquifition at Quinborough, 49 E. 3. Anno 1375. Statutes of Enquiry translated by Roughton.

any other or greater force than those of *Rhodes* or Imperial, considered only from the reason the which are not become Laws by any particular Custom or Constitution, but only esteemed and valued by the reasons found in

them, and applied to the case emergent.

'Tis true, that in Rome and some other parts of Italy, and Germany, and the Kingdom of Portugal, in all those cases wherein the municipal Ordinances of those Countries have failed in providing, the Imperial Laws (if the case be such as that it non Tragua peccado, or be not spiritual) is there made of force; but there is no other Nation, State or Republick can be named where any part of the body of those Imperial Laws hath obtained the just force of a Law, otherwise than as Custom hath particularly induced it; and where no fuch fetled Custom hath made it a Law, there it hath force only according to the strength of reason and circumstance joyned with it, or as it shews the Opinion and Judgment of those that made it, but not at all as if it had any commanding power of obedience, that is, valet pro ratione, non pro inducto jure pro ratione quantum Reges Dynasta & Reipublica intra potestatis sua fines valere patiuntur: And for Spain it is observed, Hispani duplex habent fus solum Canonicum scilicet & Regium; Civile enim (mean-

ing the Imperial Laws) not habet vim Legis, sed rationis. And fince this Kingdom, as well as most others, being free from all subjection to the Empire, having constituted or known Laws of its own, excludes all Imperial power and Law, otherwise

Selden's Titles of Honour, lib. ult. cap. ult.

than as Custom hath variously made some admis-

t 5 nor otained in those ed only not be-Custom teemed and in

arts of rtugal, nances g, the it non made ate or of the ed the n hath fetled force nd cire Opiut not obedito jure publicæ nd for Solum meanled raoft ompire, own, erwife

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fion, I applied my felf to the Collection of fuch matters, according to my inconfiderable Judgment, as are either conftituted by the Supreme Authority of the Three Estates, or that which hath in some measure obtained by continued Custom the force of Law in reference to matters Maritime and of Commerce as well in cases publick as private.

By the first part of which I thought it necessary, since Nature by Traffick hath made us all Kinsmen, to consider and examine upon what Grounds, and in what manner Commerce was first procured and established, which is by the Laws of Leagues, Embassies, and the like, which is a thing sit to be known; so likewise of what may in errupt the same, and likewise of those perpetual Rights that are between those that have any reference to Sca-

faring causes in matters Civil.

In the profecution of this Work, I have taken care to refer those things which pertain to the Laws of Nature unto Notions so certain, that no man, without offering of violence to himself, may deny them; and to ascertain the truth of such, I have used the Testimonies of such Authority (as in my weak Judgment are of Credit to evince the same) and as to that Law which we call the Law of Will or Common consent or the Law of Nations, for that which cannot by fure consequence be deduced out of fure Principles, and yet appears every where observed, must needs have its rise from free will and consent, which is that which is called the Law of Nations; both which (as much as possible) hath been endeavoured to be kept afunder where the matter hath required it. And for the Civil Law, I have ascertained the several Authorities which I have made use of, that is, of the Romans, into

three forts, the Pandeëts, the Code of Theodosius and Justinian, the Novel Constitutions, and these most excellent Jurisconsults that have by their profoundness of Judgment illustrated the obscure paths of the same Law; the third those most excellent persons who joyned Policy to Law, as Grotius, Raleigh, Bacon, Selden, and the like. Of other Pieces, that of Shardius, entituled Leges Navales Rhodiorum & seletta Rhodiorum, Petrus Pekius the Zealander, Locinius, Vinius, that of Oleron collected by Garasias alias Ferrand, and Cleriack.

As to those matters that have passed the Pikes at the Common Law, I have as carefully as possible referred to their several Authorities. In the whole Work I have no where medled with the Admiralty or its Jurisdiction, knowing well that it would

It is called Imperium, because it proceeds from the Authority of the Judge, and not from any right inherent in the party. Leg. 1. S. de Const. Princip. Coke lib. 10. sol. 73. in le Case del Marshalsea. have been impertinent and fawcy in me to enter into the debate of Imperium merum, Imperium mixtum, Jurischietio simplex, and the like, and of the bounding out of Jurischietions, which in effect tends to question the Government, and trip up the Power that gives Laws and Protecti-

on to us, fince all that can be said, as well on the one side as the other, hath been so fully and Learnedly handled and treated of by several Worthy Persons, (that have indeed said all that can be said) but more especially in that Famous Dispute not long since before His Sacred Majesty in Council, where all the most Elaborate and Ingenious Reasons that could be drawn by the Skill of a Learned Civilian, were there afferted in vindicating the Admiralties Jurisdiction, by the Judge of the same, Sir Leoline Jenkins, in answer of whom was produced that Great God Dan the Lord Chief Justice Hales, who as well by Law positive as other his

great Reasons, soon put a period to that Question, which during his days slept, and it may modestly be presumed will hardly (if ever) be awakened.

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He that hath never so little to do with the Compass, though he sits still in his place, does as much or more than all the other necessary noise in the Ship; the comparison is quit of Arrogance, for it holdeth in the design, it is not meant of the performance.

And though I well know, That those that spend their time in brewing of Books, are by Seneca compared to petty Painters, that busie themselves in copying out Originals, having this half Verse of Horace often thrown in their Teeth,

-----O imitatores, Servum pecus!

Yet I have this hope left, That my faults and flaws, like those found in the Cuts of Diamonds, may at this time the easilier escape under the excellency of their Subject, or at least under that of your Charity.

Charles Molloy.

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are lost, and regained afterwards XXVI. Whether lawful for a Chri-Rian to affist an Infidel against a (briftian by the Laws of Nations, and by our Religion.

I. A TO fooner had the Eternal Power created Man, but he bestowed on him a Right over the things of this inferiour Nature; nor was his goodness lestened upon the reparaJufin. lib. 43. reparation of the World, after the Flood, (all things being then undivided and common to all, as if all had one Patri-

his own.

A Theatre is mony) fince every man might then take to his use what he common, yet pleased, and make consumption of what he thought good the place polfessed by any in his own eyes; which use of the universal right was one, may be then instead of Property, for what any one had so taken. rightly called another could not without injury take away from him.

Fuftin. lib. 2. ut de Scythis loquitur Trogus. Promum inter Homines mali nescia, & adhue aftutiæ inexperta simplicitas.

II. Nor was it impossible for that state to have continued, if men through great simplicity, or mutual charity had lived together, and this is instanced in those Americans, who through many Ages have lived in that community and custom, and the other of Charity, which the Essens of old practifed, and then the Christians who were first at Hierusalem, and at this day not a few that lead an ascetick life; the simplicity of our first Parents was demonstrated by their nakedness, there being in them rather an ignorance of vice, than a knowledge of Virtue, their only business being the Worship of God, living easily on those things, which the Earth of her own accord brought forth without labour.

III. Yet in this simple and innocent way of life, all men perfifted not, but fome apply'd their minds to various Arts: the most ancient of which was Agriculture and Pasture, appearing in the first Brothers, not without some distribution of Estates, and then from the diversity of each man's actions arose Emulation, and then slaughter; and at length, when the good were infected with the bad, a Gigantick kind of life, that is, violent; but the World being washed by the Flood, instead of that sierce life, succeeded the define of Pleasure, whereunto Wine was subservient; and thence arose unlawful Loves, but by that more generous vice Ambition, Concord was chiefly broken, after which men parted afunder, and feverally posses'd feveral parts of the Earth; yet afterwards, there remain'd amongst Neighbours a communion not of Cattle, but of Pastures, because in the small number of men, so great was the latitude of Land, that without any incommodity it might fuffice to the uses of many, until the number of men, fo of Cattle increased, Lands, every where began to be divided, not among Nations as before, but among Families; an instance of which we have hourly before our eyes in those vast immensities that are daily appro-

priating

Seneca Naturatimm 3. in fine.

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priating and a planting in America, from hence we learn what was the cause for which men departed from the primitive communion of things, first of moveables, and then of immoveables also; to wit, because when not content to feed upon that which grew of it felf, and the Earth fingly brought forth, to dwell in Caves, to go naked, or clad with rinds of trees, or skins of Beasts; they had chosen a more exquisite kind of life, there was need of Industry, and using of Art in those matters, which they should give themselves up to; so likewise from hence we learn, that men not content to live in that innocent state of commu- Bodin. lib. 3. nity, how things went into Property, not only by the cap. 7. act of the mind (for they could not know the thoughts of one another, what every one would have to be his own, that they might abstain from it, and many might defire Grotius de Mart the same thing) but by a certain Covenant, either express libero cap. 15. as by division, or tacit as by occupation; for so soon as Communion did not please them, and division was not made, it ought to be supposed an agreement amongst all, * cic. offic. 13 that every one should have proper to himself what he sei- Addendum il zed on . * for every one might prefer himself before another, in lud Quintiliagetting those things useful for the accommodating of Humane ni; Si hac conlife, Nature not being repugnant to the fame.

IV. And though Property may feem to have fwallow'd quicquid in # up all that right which arose from the common state of fit, proprium st things, yet that is not fo; for in the Law of Dominion, babentis, profeextreme necessity seems excepted. Hence it is that in Na- & quicquid juvigation, if at any time Victuals fail, what every one repossidetur, inhath, ought to be brought forth for the common use: juria ausertur. and so in a Fire, I may pull down or blow up my Neigh- turn. 1. 3. c. 12. bours House to fave mine; destroy the Suburbs, to raise Lines or Forts to preferve the City thereby; dig in any Leg. 2. S. cum mans Grounds for Salt peter, cut in pieces the Tackling ineadem D. ad or Nets upon which my Ship is driven, if it cannot be dif quo non fragma intangled by other means: all which are not introduced 6. Quod ait. neither by the Civil Law, nor the Municipal Laws of Coun. D. incend. Lega tries, but are expounded by them, with their proper Quemadmodum diversities.

ditio oft, ut

6. item D. ad 1. Aquilam.

12 Ed. 3. tit. diftreff. 170. 11 H. 7. 5. Reniger & Fogassas, Plowden fel. 1. to the 10. Coke 3. Inftit. fol. 83.

V. Nor

V. Nor is Property fo far instated in man, but the same rerum diverso- may again be devested by such means as stand with the rum, seems to Law of Nature and Nations; and first by War, the causes opinion, that of which are assigned to be three, Defence, Recovery, and by the Laws of Revenge.

Nations one may take Arms to abate the growing power of his Neighbours. Sed ut vim pati poffe ad vim inferendam jus tribuat, ab omni equitatis ratione abborret : But that a possibility of fuffering force, should give a right of offering of force, this is far from all equity, fays the excellent Grotius lib. 2. cap. 1. fett. 27. Sir Walter Raleigh in Hift. of the

World , cap, of Duels fol. 550.

But then such War must be just, and he that undertakes it must be a Soveraign; the just causes to make a War are our Princes, or Countries defence, and that of our Allies. the fatisfaction of our injuries, or theirs; our just pretenfions to an Estate or Right; Divines have added another, not only the defence of Religion, but its advancement and propagation, by the way of Arms, and some the extirpation and rooting up a contrary. Certainly War is too rough a hand, too bad a means, to plant piety; Sicut non Martyrem pæna, sic nec fortem pugna, sed causa; As it is not the punishment that makes the Martyr, so it is not fighting that declares a valiant man, but fighting in a just cause; in which whose shall resolvedly end his life valiantly, in respect of the cause, that is, in the defence of his Prince. Religion or Country, ought to be numbred amongst the Martyrs of God.

VI. Publick War is either Solemn by the Laws of Nations, or else less Solemn. What we here call Solemn is commonly called Just, in the same sense as a just Testament is opposed to Codicils, not that it is not lawful for him that erant quedam pleaseth to make Codicils, but because a Solemn Testamatrimonia non ment hath by the Civil Law some peculiar effects; and this julta, non justi difference is worth observation, seeing many missunderstanding the word Just conceive all Wars to be condemned as unjust and unlawful whereunto this appellation of

Tust is not agreeable.

VII. That War, according to the Law of Nations, may be Solemn, two things are requisite: First, That it be waged on both fides by his Authority who hath the highest Power in the Commonwealth. Secondly, That certain Rites be used (of which we shall speak in due place) one

Ita inter cives liberi. Paul. Sent. lib. 2. tit. 19.

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of these without the other (because they are both required) doth not fuffice. Publick War less Solemn may want those Rites, and be waged against private persons, and have for the Author any Magistrate. And according to the opinion of most Civilians, if the matter be considered without Civil Laws, it feemeth that every Magistrate hath right to wage War, as for the defence of the people committed to his charge, fo for the exercise of Jurisdiction, if he be opposed by Force: but because by War the whole Commonwealth is endangered; therefore by the Laws of all Nations that War be not undertaken without the Authority of him whose Power in the Commonwealth is the highest, there is extant such a Law of Plato's, Ult. de Leg.1.3, and in the Roman Law it is called Treason in him who, D. ad Leg. Jul, without the command of the Prince, hath waged War, or lifted Souldiers, or raised an Army; in the Cornelian Law brought in by L. Cornelius Sylla it was, without the command of the people; in Justinian's Code is extant a Constitution of Valentinian and Valens, None have leave to take any Arms without our knowledge and direction. And my Lord Coke in his third Institutes observes, That by the Fol. 9. Le Roy de Common Law of this Realm it was High Treason to levy droit doit saver a War without Authority from the King, for to him it Realme vers E. belongeth only. And the reason why it should be so sub- nemies, &c. jected is, because that natural Order for preserving of Fitz-herb. Na. peace among men requires that an Authority and Council Bre. fol. 113. a. in undertaking of War should remain in Princes.

VIII. But as all Laws must be interpreted by Equity, fo must this Law; and therefore there is no question but that 'tis lawful for one having Jurisdiction by force of those which we call a peaceable Guard or Power, viz. Constables, Serjeants, Watch-men, &c. to constrain a few disobedient persons as oft as there is no need of greater Power to that purpose, and no eminent danger to the Commonwealth. Again, if it be fo present a danger, that time will not admit of Consultation with him who hath Supreme Power, here also necessity affordeth another exception; and therefore in Garrisons, if the Townsmen should endeavour to fall over to an Enemy, they may be dealt withal as Enemies by the Governour of the Garrison, and by that right L. Pinarius Governour of Enna, a Garrison in Sicily, having information that the Townsmen were falling

off to the Carthaginians, making flaughter of them. kept the Town: and the reason why such extraordinary Force is called War is, for that the fame is commenced by the right of the Magistrate, in which case the War is supposed to be made by the highest Power, because every one is judged Author of that which he giveth another Commiffion to do; besides the universal reason which warrants the act, which requires that all dangers, Rebellions and Infurrections be withstood and checkt in the very bud, and though this is called War, yet this strictly is not properly war though the parties who suppress or punish are impune.

IX. But War properly by the Laws of this Realm or Solemn, is, when the Courts of Justice are shut up, and the Judges and Ministers of the same cannot protect men from violence, nor distribute Justice : so when by Invasion, Insurrection, Rebellion, or the like, the current of Justice is stopt and shut up, Et silent leges inter arma, then it is said to be time of War, and the tryal of this is by Records and Judges of the Court of Justice, and not by a Jury. likewise War by the Laws of England is when the Kings Standard and Host enter the Realm of another Prince or State, and hath been there by the space of forty days, for

Trin. 7 Ed. 3. till then the War is not properly faid begun.

X. Wars, though undertaken by publick Authority, must have the effects of Law, that is, there must be a just cause for the undertaking the same; so that Alexander, if that without cause he warred upon the Persians and other Seneca de bine- Nations, is by the Scythians in Curtius and by Seneca too deservedly called a Robber. For take away Tustice, and what are Kingdoms but great Robberies? Therefore the just cause of taking Arms must be the iniquity, or as we understand it, the injury of the adverse party, according to the words used in the ancient denunciation of the Roman Heralds, * I call you to witness, that people is unjust, and doth not perform what is right. Now that is unjust which hath a necessary repugnance to the rational and focial nature. Now amongst the first principles of Nature there is nothing to war, there is much in favour of it; for both the end of War, the conservation of life and members, and the keeping or acquiring of things useful unto life is most agreeable unto those principles: and if need be, to use Force to that purpose is not disagreeable,

fince

fic. 1. c. 13.

84 Ed. 3. tit.

122. inter Mor-

zimer and the Earl of Lanca-

Scire facias

of. 29.

* Ego vos teftor, Populum illum injuftum effe,neque jus perfolyere.

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fince every thing hath by the gift of Nature strength to the end it may be able to defend and help it felf, and therefore he is by Nature fitted for Peace and War; though coming into the World unarmed, yet he hath a hand fit to provide and handle Arms, the which we daily fee children of their own accord, without a Teacher, make use of for a Weapon. Moreover right reason and the nature of society inhibits not all Force, but what is repugnant to fociety, that is, which deprive thanother of his right; for the end of fociety is that by mutual aid every one may enjoy his own. And this were fo, although the Dominion and Propriety of Poffessions had not been introduced; for life, members, liberty would yet be proper to every one, and therefore could not without injury be invaded by another, and to make use of what is common, and to spend as much as may suffice Nature, would be the right of the occupant, which right none without injury could take laway: and that is made evident, fince by Law and use Dominion is established, and that appears by the Orator, Ut si unumquodque membrum sensum suum haberet, ut posse putaret se valere si proxi- Tullies Offic. 30 mi membri valetudinem ad se traduxisset, debilitari & interire totum corpus necesse est: and applying that says, So if every one of us snatch unto himself the commodities of other men, and draw away from every one what he can to advantage himself, humane Society cannot stand, Nature gives leave to every man, in the acquisition of things useful, to supply himself before another: but by the spoils of another to increase his own store, that Nature doth not permit. It is not then against Society to provide for ones felf, fo that anothers right be not diminished; nor is that violence unjust which doth not violate the right of another. Of the two kinds, contention by debate and by force, the one agreeing to men, the other more becoming beafts, we must flie unto the latter when the former will not ferve. The incomparable Ulpian fays, Cassus writes that it is by N ature lawful to repel Leg. 1. sett. vim force by force, and arms by arms. And this is further pro- vi. D. de vi, ved out of Sacred History; for when Abraham having vi. arma. a. armed his Servants and Friends, purfued the four Kings that spoiled Sodom, and returned with Victory and Spoil of the Enemy, God by his Priest Melchisedeck approved his action, Bleffed be the most High God, faid Melchisedeck, Gen. 14. 18. who hath delivered thine enemies into thine hand. Abraham,

as appears by the story, had taken Arms without any special Commission from God; therefore the Law of Nature was his Warrant, whose wisdom was no less eminent than his Sanctity, nay God himself hath prescribed to his people general and perpetual Laws of waging War, thereby shewing that Wars may be just, even without his special Mandate; for he doth plainly distinguish the cause of the feven Nations (in which God gave a special Mandate for the destroying of them, which is properly called the Wars of God, and not of humane Council) from the cause of other people, and prescribing nothing about the just causes of entring into War, thereby shews them to be manifest enough by the light of Nature, as the cause of the defending of the Frontiers in the Wars of Jephtha against the Ammonites, and the cause of Ambassadors vio-

XII. By the Law of Nature in War those things are

lated in the Wars of David against the same.

acquired to us, which are either equal to that, which being due unto us, we cannot otherwise obtain, or else is fuch a mark as does infer damage to the guilty party by a fit measure of punishment and by the Laws of Nations, not only he that wageth War on a just cause, but every one in folemn War, and without end and measure, is master of all he taketh from the Enemy in that sense that by all Nations, both himself and they that have Title from him, are to be maintained in the possession of them; which as to external effect we may call Dominion; Cyrus in Xenophon, It is an everlafting Law among men, that the Enemies City being taken, their Goods and Money should be the Conquerours; for the Law in that matter is as a common agreement, whereby the things taken in War become the Takers. From the Enemy are judged to be taken away those things also which are taken away from the Subjects of the Enemy, and Goods fo taken cannot by the Law of Nations be properly faid taken; but when the fame are out of all probable hopes of recovery, that is, as Pomponius observes, brought within the bounds or guards of the Enemy; For, fays he, such is a perfon taken in War, whom the Enemies have taken out of our, and brought within their guards, for till then he remains a Citizen. And as the Bello Parag. Si Law of Nations is the same reason of a man, so likewise of quis servum in Law of Nations is the famile reason of a man, to incerne of pr. de capt. & a thing; and therefore Goods and Merchandize are properly

Benoph. 5. de Inflit. Cyri.

Arift. I. Polit.

Huinsmodi res non tam capta quam recapta intelligitur, per D. per Pomponius & Leg. in poft.

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berly faid to be the Captors, when they are carried infra Prasidia of that Prince or State, by whose Subjects the same were taken, or into the Fleet, or into a Haven, or some other place where the Navy of the Enemy rides: for then it is that the recovery feems to be past all hope. And therefore the Common Law of this Realm calls such a taking a Legalis 7 R.2. Trespass Captio in Jure Belli, and in 7 R. 2. an action of Trefpass Statham Pl. 54was brought for a Ship, and certain Merchandize taken away, the Defendant pleaded that he did take them in le baut Were ou les Pozmans queur font Enemies le Kop: and it was adjudged, that the fame Plea was good. And in the year 1610, a Merchant had a Ship and Merchandize taken by a Spaniard, being an Enemy; a month after a M. 8 Jac. in Merchant Man, with a Ship called The Little Richard, re- 2. part in Wetakes her from the Spaniard: it was adjudged, that fuch Rons C. a possession of the Enemy, divested the Owner of his interest, and the retaking afterwards in Battel, gained the Captors a property.

XIII. 'Tis true, the Civilians do hold. That it is not every possession that qualifies such a Caption, and makes it become the Captors; but a firm possession (that is) when the prize doth pernoctare with the Enemy, or remain in his possession by the space of 24 hours; but as this is a new * Law, fo it is conceived to be against the ancient * consulatu Ma-Judgments of the Civil Law as well as the modern practice 135 c. 283, 287. of the Common Law: for the party in the ancient Presi-lib. 20. tit. 13. dents doth not mention by their Plea, that the prize did art. 24. pernoctare with the Enemy, but general, that the same 7 R.2. Trespass

was gained by Battel of the Enemy.

XIV. This right of changing of Dominion or Property by force of Arms, is fo odious, that in the taking of Goods, if by any possibility the right Owners may have restitution, the same hath been done. And although a larger time than 24 hours happens between the capture and recapture, and formay pernoctare with the Captor, yet reititution may be made; and therefore if one Enemy takes the Ship and Merchandize of another Enemy, and brings her into the Ports or Havens of a Neuter Nation, the Owners may seize her, and the Admiral of that Neuter Nation may in some cases restore the Ship and Goods to their Owners, and the persons captive to their former liberty; the reason is, for that the same ought to have been brought

Statham Pl. 54.

præstdia perdude nondum funt. quanquam abbostibus occuba ta . Dominum non mutarunt ex Gentium iure. Grotius de jure Belli ac Pa-

in B. R. Marthe's Reports.

Per leg.libertas,

& de leg. Fur.

Res que intra infra Presidia 2 of that Prince or State, by whose Subject the was taken.

A Dunkirker having seized a Frenchmans Vessel, super altum Mare, fold the same with her lading at Weymouth ; whither it had been driven before she was brought infra Prasid. Dom. Reg, Hispania: the Frenchman coming into Port, there claims the benefit of the Laws of Nations, the King of England being then in amity with both their Princisl.3.c.9 §.16. ces, and that restitution be made; in which case it was resolved by all the Judges, b That if there be a Caption Trin. 17 Car. I. by Letters of Marque, or by Piracy, and the Vessel and Goods are not brought infra Prasidia of that Prince or State, by whose Subject the same was taken, the same will not divest the property out of the Owner; with this agrees the Law Civil, and restitution may be made. For this is not an absolute property immediately vested in the Captor upon the taking; but a conditional property to answer the original debt or damage, which cannot be done without a Judicial adjudication, the opportunity of which he hath lost by bringing the prize into the Country of another Prince: for as to private War, their Countries are as an Afylum.

Buiffred 3. part. fol.28. cited in Marfhe's Cafe.

not make a both States ; nor can they enmity. Coram Rege & Confilio (uo in Camera Stella-

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XV. But if the Ships of War of Nations in enmity meet at Sea, and there be a caption, if there be that which is called a firm possession, the Neuter Nation cannot re-deliver or make restitution of the thing so acquired: and so it was adjudged, where Samuel Pellagy with a Ship of War of the Emperour of Morocco, took a Spanish Ship, and brought the same into England, that he could no ways be questioned for the same criminaliter, or restitution to be made civiliter; for that the King of Spain and the Morocco Emprizal against a perour were enemies, and the King of England in amity Nation, does with both, and that fuch a caption is not called Spoliatio, fed Legalis captio, in which there can be no restitution made, War between upon neither of the Statutes of 31 H. 6. cap. 4. or 27 Ed. 3. cap. 13. for he that will fue to have restitution in be faid to be at England for Goods taken at Sea, must prove, That the So. veraign of the party was in amity with the King of England. 22 E. 3. fol. 13. Secondly, That he that took the Goods, his Prince was at the time of the taking in amity with the Soveraign of him whose Goods were taken; for if he, which took them, was in rum. Michaelm. enmity with the Soveraign of him whose Goods were ta-

ken, then the same will not amount unto a depredation or robbery, but a lawful taking, as every enemy might 2 R-3. fol. 2. A. take of another.

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A Spanish Merchant, before the King and his Council, in Camera Scaccarii, brought a Bill against divers English- 7 E. 4. 14. Men, wherein fetting forth quod depradatus & Spoliatus fuit, 13 E. 4.9. upon the Sea, juxta partes Britannia per quendam Virum Bel. 22 E.3. fol. 23. licolum de Britannia, de quadam Navi, and of divers Merchandifes therein, which were brought into England, and came into the hands of divers English. Men, naming them, and fo prayed process against them, who came in, and pleaded, that in regard this depredation was done by a Stranger, and not by the Subjects of the King of England, they ought not to answer. It was there resolved, Quod quisquis extraneus, who brings his Bill upon this Statute to 27 E. 3. c. 13. have restitution, debet probare quod tempore captionis suit de 31 H. 6. c. 4. which gives reamicitia Domini Regis ; and alfo, quod ipfe qui eum receperit, flitution by the & spoliavit, fuit etiam sub obedientia Regis, vel de amicitia Chancellor, and Domini Regis, sive Principis quarentis, quia si fuerit inimicus, one Judge, and & sic ceperit bona, tunc non fuit spoliatio, nec depradatio, sed by the Chan-

alterum. But if the King of England is in enmity with the States of Holland, and one of their Ships of War takes a Merchant-Hujusmodi res Man of the King of England's, and afterwards another quam recepta, Ship of War of England meets the Dutch-Man and his intelligitur : per prize, and in aperto pralio, regains the prize, there re. D. Leg. Pompoflitution is commonly made, the Owners paying the Sal- nius & per Leg. vage: so where the prize is recovered by a Friend in amity, in Bello Par. so or comes into his Ports, restitution is likewise made; but pr. de Cap. & when such Goods become a lawful and just prize to the post. Captor, then should the Admiral have a tenth part, fol. Per Lig. positilowing the religious example of Abraham, after his Vi minium, Par. ctory over the five Kings.

Capt. & postli. Boyce & Cole, vers. Clarton, Hill. 26, & 27 Car. 2. in B. R. Restitution made formerly by a French-Man, who had regained an English prize out of the hands of a Dutch-Man of War.

legalis captio, prout quilibet inimicus capit super unum & cellor alone.

XVI. He that is an Enemy, may every where be affaulted, according to the Laws of Nations. Enemies may therefore be attaqued or flain on our ground, on our Enemies, or on the Sea; but to assault, kill, or spoil him in a Haven or peaceable Port, is not lawful; but that proceeds not

from

Sir walter Raleigh l. 5. c. 3. G: 17.

from their persons, but from his right that hath Empire there, for Civil Societies have provided that no force be used in their Countries against men, but that of Law, and where that is open, the right of hurting ceafeth. The Carthaginian Fleet was at Anchor in Syphax Port, who at that time was at peace with the Romans and Carthaginians; Scipio unawares fell into the same Haven, the Carthaginian Fleet being the stronger, might easily have destroyed the Romans: but yet they durft not fight them. The like did the Venetian, who hindred the Greeks from affaulting the Turkish Fleet, who rid at Anchor in a Haven, then under the Government of that Republick; so when the Venetian and Turkish Fleet met at Tunis, though that very Port acknowledges the Ottoman Emperour; yet in regard they are in the nature of a Free Port to themselves, and those that come there, they would provide for the peace of the fame, and interdicted any hostile attempt to be made there.

The Corfaires having been in the Gulph, put into the Port of Vallona, which is subject to the Turk: whereupon Capello, Proveditor General for the Venetian, and Captain of the Gulph, having notice of the same, made into the Port; and though the Ottoman Port had by Treaty permitted the Venetians to pursue the Pirates in all places, and forbad their Commanders to protect or shew them any favour, yet the Castle interdicted, and forbad the Venetian General with Cannon to attack them; for it was nevertheless intended by the Treaty that the peace of Ports

must be preserved.

Fullers Holy War 1.4.6.23.

Hiftory of the

Republick of

Venice in Anno

1638. and fol.

And the same Republick having War with those of Genoa, met at Tyre, Reinerius Zenus Duke of Venice with the united Power of the Venetians and Pisans, counting no sewer number than 74 Vessels well provided, and would have engaged in the very Haven, but were there interdicted by the Governour; but yet with this Proviso, that if by consent they would go out of the protection of the Port, and at open Sea decide the cause, they had then seedom: and accordingly they sailed forth and engaged. The like not long since happened between Cornelius De Wit Commander of a Ship of War of the States General, and Captain Harman Commander of one of His Majesties Frigats at Cales, a Challenge being made in that Port by the first, and as briskly accepted by the latter, but both were interdicted

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the execution of the fame in the Port, but out of the protection of the same they might decide the question; the June An. 1672 which they did to the no small Fame of the last; for in that dispute, of 380 men then aboard the States Man of War there were scarce 100 whole men in her, and having entred and taken her, brought her at his Stern in Triumph to the Port again.

But they of Hamborough were not so kind to the English, when the Dutch Fleet tell into their Road, where rid at Anna 1666, the same time some English Merchant-Men, whom they 1666. Bell. when the Dutch Fleet fell into their Road, where rid at affaulted, took, burnt and spoiled: for which action, and Anel. cum not preferving the peace of their Port, they were by the Batav. Law of Nations adjudged to answer the damage, and I think have paid most or all of it since. But Enemies in their own Ports may be affaulted, burnt or destroyed by

the Law of Arms.

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conservanda sunt Jura Belli. Reg. fol. 129. Arrest. fast. Super bonis Mercator. alienig.

XVII. If the Ships of any Nation happen to arrive in any of the King of England's Ports; and afterwards, and before their departure a War breaks out, they may be fecured, priviledged without harm of Body or Goods; but Some of old under this limitation, till it be known to the King, how have held that the Prince or Republick of those, whose Subjects the par- Clericus, Agrities are, have used and treated those of our Nation in their tor tempore bell's Ports. But if any should be so bold, as to visit our Ports at colat, commuafter a War is begun, they are to be dealt with as Ene. tet, oretq; pare mies.

XVIII. By the Laws of Nations generally all things are the Captors, which he takes from his Enemy, or which his Enemies gained from another by Force of Arms; fo likewise all those Goods that he shall find in his Enemies custody: But then it must be apparently manifest, and evidently proved, that it is really the Enemy's; for if an English-Man should have Goods in the custody of a Dutch Factor at Cales, and a War should break out between that Prince and that Republick, yet are not the Goods of the English-Man subject to the seisure of the Spaniard, it being apparent, the owner is not a Subject of their Enemies: So likewise if the Goods of Friends are found in the Ships Conful. Maris of Enemies, this does not ipfo facto subject the same to be prize by the Laws of Nations; though it be a violent pre-

FRUNTUR. Co. 2-Luftic. fol. 18:

fumption,

Moffis fit ille. qui intra presidia ejus funt : Enemy, and they that are within his Guards. Liv. Lib. 37. & alibi paffim.

fumption, and may justly bear a legal examination, till which there may be a fecuring of the prize, till adjudication shall pass. So on the other hand, if the Ships of Let him be our Friends shall be fraighted out to carry the Goods of Enemies, this may subject them to be prize, especially if the Goods shall be laden aboard by the confent or privity of the Master or Skipper; though in France they have subjected and involved the innocent with the nocent, and made both of them prize. In the late Flemish Wars with England the Oftenders became obsequious serviceable with their Ships to the Traffick and Commerce of both Nations. Memorable was the action, when the War was between the two Republicks, Venice and Genoa, the Grecian Ships being then imployed, (as those of Oftend) were fearched, and the Enemies pulled out, but no other matter done: however it is most certain, let the Commission or Protection of fuch Ships be what they will, if men will venture to trade under fuch a cloak, it behoves them, that the Skipper and his Crew be entirely ignorant; for it is his action that will go far in the freeing, or making absolute the prize, and Goods fo made prize, the property is immediately gone and changed, be the Owner who he will, he never can claim the fame; for the Laws of Nations made the Enemies first Masters by external Dominion, and then by Conquest gave the property to the Captor : following that Judgment of the Romans, What soever they got of their Enemies by valour, they would transmit to their Posterity by right.

Gregor. lib. 9.

Romani nos bonestissimas eas

atque justiffimas credimus possessiones quas Belli Lege captas babemus; neque vero induci possimus ut stulta facilitate deleamus virtutis monumenta, si eas illis reddamus, quibus semel perierunt : imo verò tales possessiones, non tantum cum his qui nunc vivunt civibus nostris communicandas; sed & posteris relinquendas censemus : tantum abest ut parta relinquendo in nos ipsos ea constituamus, que in Hostes constitui solent : Titus Largus his opinion in the Senate of Restitution : We Romans believe those possessions to be most honourable and just, which we have taken by the Law of War; nor can we be induced by a foolish facility to part with the monuments of our Valour, and reftore them to those that were not able to keep them; nor do we judge fuch possessions to be communicated only to our Country-men now living, but to be left to our Posterity. So far are we from relinquishing what we have got, and dealing with our felves, as if we were our own Enemies. De Veij, idem in Romale narrat Platarchus.

> XIX. 'Tis not against nature to spoil the Goods of him, whom it is lawful to kill; and by the Laws of Nations it is permitted that the Goods of Enemies may be as well spoil-

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ed as taken; and Polybins observes, That all things of the Hift. s. Enemies may be spoiled, their Ships, Goods, Forts, &c.

XX. And though it may happen fometimes, that a War may break out, and there may be no publick denouncing or proclaiming the fame; that if a Friend or Neuter should affift an Enemy with Contraband Goods, that is, Arms, &c. 2 Eliz. in C. 2. whether upon such a caption the Goods may be made owens Report, prize; the resolution of which will depend on these Con-fol-45 but quefiderations.

First, By Natural Law, where either force offered, is repelled, or punishment exacted of one that bath offended, and is Grotius lib. 3. denied there needs no denunciation; for Princes are not to 649.3.5.2, 3. fland debating with words or arguments, being injured beyond words: For War undertaken to refut violence, is proclaimed not by an Herald, but by Nature: for it is no more than the invading of one for another, or taking of the Goods of the Debtor, to answer the Creditors damage.

Secondly, Interpellation is introduced by the Laws of Nations, whereby Princes or Republicks, having received injuries, may apparently shew that they had no other way to recover their own, or that which is due to them: for fuch Interpellation following after injuries committed, con- Vide Maria stitutes that Prince or State in a fault that shall not render nam 27.13.

Satisfaction. Thirdly, Admitting that Interpellation hath gone, and Demonciation's fatisfaction hath been required for the damage, and no either condifatisfactory return hath been made, whether then the tionate or Ships or Territories of the Enemy may be affaulted: and pure: Condifor that it has been conceived they may, for denunciation it is joyned is no more but to fignifie that the parties, against whom with remandthe same is commenc't, are unjust, and will not do right, ing of things, and therefore War is begun by the Supreme Power. Now Prin- and in the ces or Republicks having done that which by the Law of name of res re-Nature they were not obliged to do, that is, after a ralds Law, calwrong done, abstained from War by friendly demanding led Justiciale, of fatisfaction or reparation (which is required only by comprehendthe Laws of Nations) and publick Justice being denied ed not only them, there remains no other or further obligation on right of Domithe State, the same amounting to, and indeed is an appa-nion, but also rent defiance; and Proclamation is no other. on of that which is due upon a Civil or criminal cause. Soverius.

the profecuti-

-ad 10. An. XXI. True it is, that while the Romans were encor? explains it rupted in their Discipline, they were religiously scrupurightly, thence was that in the lous in beginning a War; for they never fent forth their Armies till they had fought for Justice in the tracts of Forms to be rendred, to be Peace, and after the publick promulgation of their intent. satisfied, to be Such also was the integrity of the Acheans, before they rilled, where had forewarned the Enemy to a defence. Machiavel comto be yielded, mends the simplicity of the ancient Florentines, that enteras we have faid mends the simplicity of the include the simplicity of the simplicity elsewhere, is to prised no Hostility on their Neighbours till they had by beunderstood, ringing a Bell for the space of a whole month, summoned unless they that them to a peaceable satisfaction or a brave resistance: but are called up-on will rather these Customs and Institutes are only of some Countries, punish the guil- not from the Law of Nations; the white Rod among the ty themselves: Greeks, the Tursis and bloody Spear among the Agnicola, this requiring renunciation of Friendship and Society (if there had been of things Pliny any) thirty folemn days after fatisfaction demanded, * are tellifies was named Clarigati- rather introduced by that which we call the Custom or Law of particular Kingdoms and States; for there may on, lib. 8. * The throw- be War no question introduced, without any solemn ing of the Spear Proclamation, as the violation of Ambassadours by apandsuch fort of probation of publick Authority is an open denunciation did not belong of War, and upon the same reason Gust avus Adolphus into the Law of vaded * the German Empire, without ever declaring War, Nations, which to revenge the contumelious usage of his Ambassadours in process of at Lubeck. time became

obsolete, may the third Punick War was at once indicted and begun. Varro lib. 4. de IL Phil. Arlanibaus Arma Sueica fol. 13. 37. Zouch de Inre Faciali part. 2. fet. 10. qu.

An bellum aliquando omi fa indictione movere liceat?

who hath the highest Power over the people, it is supposed to be proclaimed against all his, not only Subjects, but those who will joyn themselves unto him, as being an accession to his party. And this is that which the Law interprets, the Prince being defied, his adherents also are defied; for to proclaim a War is to defie, which is to be understood of that same War which is waged against him to whom it is indicted, as when War was denounced against Antiochus, they were not pleased to denounce it against the Ætolians apart, because they had openly joyned themselves with Antiochus: the Heralds answered, The Atrolians have declared War of their own accord against themselves;

XXII. But if War be indicted, or is begun against him

Diffidate Prineipe, diffidati funt ejus adharentes. Baldus ad Leg. 2. C. de Serv. n. 70.

Ziv. lib. 36.

but that War being ended, if another People or King, for uncor: supply of Aids, is to be warred against, that the effects of Icruputhe Laws of Nations may follow, there will be need of th their a new Indiction; for now he is not lookt upon as accessa- Idem dici potest racts of ry, but principal: wherefore it is rightly faid, That by de bello sociorum the Law of Nations, neither the War of Marline woon the Ulysis in cycointent. the Law of Nations, neither the War of Manline upon the nas Priame re they Gallo-Greeks, nor of Cafar upon Arioviftus was lawful. quondam auxiel com-For they were not affaulted now as an accession of a Neigh-liatos, de quibus enterbours War, but principally: to which purpose, as by the Hom. Odys. 1. had by Law of Nations Indiction, so by the Roman Law a new bibi Didymoned Command of the Roman people was necessary. For what e: but was faid in the proposal against Antiochus: Was it their Livius lib. 366 ntries, will that War should be entred with King Antiochus and those 42. ng the that followed his Party (which was observed also in the Demicola, cree against King Perseus) seems truly understood so long as d been the War continued with King Antiochus or Perseus, and of , *are those that really immixed themselves in that War. om or e may

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XXIII. Now the true reason wherefore Nations required Denunciation to that War which was faid to be just by the Law of Nations, was not that Force should be offered privily, or carried on by deceit, for that pertains more to the excellency of their Valour than to strict Right; (for fome Nations (as we have read) have appointed their Enemy the time and place of Battel) but that it might certainly appear the War was not waged by a private undertaking, but by the will of either people or their Heads. Servius Honoratus when he had deduced the Original of the Heralds Law from Ancus Marlius, and further from the Aquicole, saith, That if at any time men or beasts were by any Nation taken from the people of Rome, the Pater Patratus went with the Heralds (that is, Priests) who have Authority in making of Leagues, and standing before the bounds, Tum cortare owith a loud voice pronounced the cause of the War; and if they puisse listoit. would not restore the things taken, or deliver up the Authors of the injury, he threw a Spear, which was the beginning of the fight, and thenceforth it was lawful, after the manner of War, to take the Spoil.

XXIV. As War is not only lawful against those that are our Enemies, but likewise against those that supply them; but yet we must distinguish of the things themfelves. For some things there are that have use only in War, as Arms: some that have notife in War, as those

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that ferve for pleasure; some that have use both in War and out of War, as Money, Corn, Victuals, Ships, and things belonging thereto.

I. It is plain, that by the first he is my Enemy that supplies my Enemies with things necessary for the War.

2. But by the second he is not, according to that of Seneca: in enmity, and I will not help him to monies to pay his Guards; but if he shall dethe Englishneu- fire Marbles and Robes, such things burs not others, only they miter with both, mifter to his tuxury: Soldiers and Arms I will not supply him with a the latter per- if he shall seek for Players and recreations to soften his siercenes, French King to I will gladly offer to him: Ships of War I will not fend him, but build a Vessel such as are for pleasure and offentation of Princes sporting in of Pleasure at the Sea. I will deny to give to one that purposes the dewas fent into fruction of anothers Country those things that are essen-France, and was tial, for it is a bounty not to be allowed of.

lib. 3.

against the the enfuing War was accounted just on the King of Brisains part. S. 12.

3. But in the third, which is a doubtful use, there the the Neutrality, state of the War is to be considered: For if I cannot defend my felf unless I intercept the things fent, necessity * Grotius in ju- will then give right, but with the burden of restitution *, To Belli & Pacis except some other cause accede; but if the apportation of those things hinders the execution of my right, and he could know fo much who brought them, as if I had driven the Enemies Fleet into a Port or Haven, or had East India Fleet straitned a Town with a Siege or Blocade, and were now into Bergin, and in expectation of their yielding or compounding, there the Dane there is no question but he that shall in such case succour my protected them Enemy, ought in Justice be made liable for the damage I have fustained through his means: like a Gaoler that shall wilfully suffer my Prisoner to escape; or one that ons, for which hath rescued my Debtor justly detained by me for my damage whereby I am injured, and according to the measure of my loss his Goods also may be seized and brought into fuch a state, to the end I may obtain a just fatisfaction. But if he hath not yet done any damage, but hath been willing to doit, there will be a right by retention or stay-Reflicut. pag. 3- ing of the Ship and Goods to compel him to give cantion for the future; but if my Enemies injustice towards me be most evident, and a Nation that ought to be neuter confirm him in that most unjust War, in that case it will not only Civilly be liable, but Criminally as one that rescues a Pirate manifeftly guilty from the Judge at the very Bar, and therefore it will be lawful to determine against him n War , and

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by fuch measures as are necessary and meet for his offences wherefore within those rules, he may be spoiled of Ship and Lading; and that is the true reason wherefore Indiction or publick Proclamation by internal right ought to be denounc't, that so other Nations may see they have a just cause who commenc't the War, and that they ought not to be impeded in the acquiring due fatisfaction.

And though Neuters are not compellable, by the rigor of War, to afford affishance to either Party without the will of the other, yet such may the emergency of the case be, that if enforced, they may lawfully declare, though to the damage of the weaker. Such was the case, when the Venetians had so far prevailed against the Turks in Candia, that Canea which they then belieged by Sea and Land, was brought to that extremity, that in all humane probability it must then have been speedily surrendred, the English Ships being then at Smyrna, and prest by the Turk to affift the Grand Signior in the relief of that City. If the persons whom the English had thus assisted, had been Christians, there is no question this Auxiliary aid had been well; but to affift an Enemy of Christianity against Christians themselves hath seemed doubtful: but furely there feems little reason for such an ama biguity; for if it be lawful to make League with those that are Aliens from the true Religion by the Law of Nature, then there can be no doubt but they may be aided. Now by the Law of Nature they may be entred into by Christians with such, for that Law is so common to all men, that it admitteth not any difference of Religion: nor Laus corum in was the same universally forbidden by the Hebrew Law, as Thargum. appears by Abrahams aiding the wicked Sodomites with his Arms; and that which was very remarkable, that the Asmoneans being exceeding skilful in the Law, and great Observers of the Hebrew Rites, yet made they Leagues Vid. Carolum with the Lacedemonians and Romans by the confent of the Molin. tract. 2. Priests and people, yea and publickly offered Sacrifice for diffut. 112. their fafety: nor were they forbidden by the Evangelical Law, according to that of Tertullian who observes, That Lib.7. ch. 3. fo long as Ifrael was only his people, God did justly command mercy towards their brethren alone; but after that, he gave unto Christ the Nations for his inheritance, and the ends of the Earth for his possession, and that began to be

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Di Shipe of War.

Vide the Cafe at large in the end of this Chapter.

Jus feciale.

paid which was promised in Hosea, They that were not my people shall be my people, and the nations that had not obtained mercy shall obtain mercy; From that time Christ hath extended unto all the Law of fraternal benignity, excluding none from our Compassion, no more than from his Vocation: from whence it follows, that the action of those

Captains being then in the power of the Turk, was lawful

in the affifting them against the Venetians. XXV. And although the Goods of Friends, according

to the circumstance of the case, may be preserved by adjudication, and restored to their Owner; yet all manner of Goods have not that priviledge: for though the Freedom of Trade preserves the Goods of Friends against the rigor of War, yet it does not those Goods that supply the Enemy for War, as Money, Victuals, Ships, Arms, and other things bethe third, what longing thereto; for to supply an Enemy that invades our right, or feeks the destruction of our Countries, is a liberality not to be allowed of, and it certainly stands with necesbitedMerchan- fity, that if I cannot safely defend my self, or endamage my Enemy without intercepting the things fent, it may justly be done: but when such Goods are seized, whether they give the Captor a right of property, or a right by retention, to compel that neuter Nation to give Caution for the future, by Hostages or Pledges, not to supply the Enemy, may be a question. The Romans, who had brought Victuals to the Enemies of Carthage, were taken by the Carthaginians, and again rendred upon request; the Hollanders in the heat of the War between Sweden and Poland, never fuffered themfelves to be interdicted with either Nation; the fame State when they had War with Spain, intercepted the French

> And Pompey, in the History of the Mithridatick War, fet a Guard on the Bosphorus, to observe if any Merchant failed in thither; who foever did, and was taken, was furely put to death; so Demetrius when he possessed Attica with his Army, having blockt up Athens, hanged up both the Master and Commander of a Ship, who attempted to bring in Corn: the Hollanders having blockt up Dunkirk, some English Merchants Ships did attempt to enter, but were

Ships, paffing to or for Spain, but restored them.

denied by the Hollanders.

Most certain, if a Neuter Nation hath had notice of the War and Caution given them (as is usual) not to supply

Vide Treaty I. Dec. at London 1674. Art. is meant by Goods Contraband, or prohidizc.

Cambdens vide ann. 1589, \$595

Plut arch.

Murfins in his Danish Hift. L part. 2.

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the Enemy with Counterband Goods, as they call them; if fuch be the case, the prize is become absolutely the Captors. So Queen Elizabeth did, when the feized on the Vide Tit. Cu-60 Sail of the Hansiatick Towns, who were carrying of stoms. Goods, ropas contrabanda, to the Spaniard her Enemy; she condemned them, and made them absolute prize: For as Neuters are not compellable by the rigour of War, to give any thing against their will, so must they not against the will of each Party afford such things as may damage one another. For Persons or Nations having had notice of the War, which 31 Eliz. C. 3: is done, and Caution given fometimes by Proclamation, or some other publick Edict, signifying the right of their Caple, and shall afterwards gather to, and assist the Enemy, whether Affociates, Neuters, or Subjects, the fame yields Bald.ad l. 2.c.de arith, fo far as to them, not only to the charge and sev. n. 70. Undamage that may fall thereby, by making them prize; but der the name may make them obnoxious to punishment: For it is the of Contraband duty of those that abstain from War to do nothing for the may be comduty of those that abstrain from war to an nothing for the prehended strengthning of him who maintains a bad cause, whereby the Arms only, as motions of him that wageth a just War may be retarded; and pieces of Ordwhere the cause is doubtful, they ought to shew them- nances, with all felves equal to both, permitting passage, baking, dressing, Impliments beand affording provision for each Army, or Navy.

them, Fire-

Balls, Powder, Matches, Bullets, Pikes, Swords, Lances, Spears, Holberts, Guns, Morrar-Pieces, Petards, Granadoes, Musket-rests, Bandaliers, Salt-peter, Muskets, Musket-shot, Helmets, Corflets, Breaft-plates, Coats of Mail, and the like kinds of Armature; so for Horses and other warlike Instruments. Vid. Marine Treaty between England and Holland, Decemb. 1. 1674. Art. 3. Vide the Attempt made by John Burrough to trade with the Swede expresly against the interdiction of the Danish King: Sir Walter Raleigh, 1. 5.

L. Amilius Prator accused the Tejans for victualling the So likewise it is Enemy's Navy, promising them wine, adding, That unless Ships, Mastis, they would do the like for the Navy of the Romans, he shall be thought would account them as Enemies: but common experience or accertained hath taught Nations and Kingdoms, when they declare capable of Ara Neutrality, to make provision by way of League with ming an Eneboth the Nations at War, that when it should happen the my.

Armies of both, or any draw towards their Territories, nunc. lib. 2. de it might be lawful for them to exhibit the Common offices Judais Calicaof humanity to both.

It happened that about feven stout Mecrhant Men rode in the Port at Smyrna; the General of the Vene-

Of Ships of Mar.

tians being jealous of their joyning with the Turkish Armado, defired to know their minds, who answered, they would prove Neuter in the dispute; but afterwards (though at first the Captains all refused) upon the threatning of the Grand Signior, to lay an Embargo on all the Goods of the English Nation in his Dominion, and to make flaves of their persons; those Captains were forced 1651. vide R. to joyn with the Turkish Forces, who beat the Venetians from before Canea, and fo relieved it : the Venetians Amin equal danger baffadour complained to the then Powers in England, but with the Trade. could have no relief, being answered, That those Ships being in the Turks power, were subject to it, the accident being fuch as made the action lawful, as we have afore remembred.

Anno 1640, or cooke of the Church's flate

CHAP.

CHAP. II.

Of Letters of Barque and Repzizal.

I. Of Reprizals generally considered, and for what causes awarded.

II. Whether unlawful by the Law of Nature and of the Roman Law.

III. Where lawful by the Laws of Nations at this day, and the reafons wherefore they are so received. IV. Of the advantages that accrue

univerfally by such Reprizals.

V. Of the essential causes or grounds
generally for the awarding Letters

of Reprizals.

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VI. Of the effential causes or grounds particularly that are requisite before they can be awarded by the Laws of Nations and of this Realm.

VII. Of the ordinary and extraordinary by the Laws of England.

VIII. Whether the same creates a debt in the Grantee, and whether the Execution may be suspended.

IX. Whether the awarding the same amounts to a breach of Peace.

X. Of Letters of Reprizal extraordinary where granted, and of what

XI. That it confifts with the Interest of Princes not only to prevent those things that may occasion Reprize, but likewise not to deny the same, if there be ground sufficient.

XII. The difference of Injufice offered to Subjects and to Foreigners, and where the one is concluded by the same and not the other.

XIII. What is meant by denying of Right and doing of Injustice, and where Reprizal takes rooting, and where not.

XIV. Of Reprivals where awarded, for denying of common Justice, or those which are called Letters of Marque in cases ordinary.

XV. Not repairing the damage after

Letters of Request creates a National debt, and is the foundation of Reprizal.

XVI. Domicil not origination subjects to Reprize.

XVII. Reprizal not grantable, if the spoil was occasioned by war.

XVIII. Of persons exempted from Reprizal by the Laws of Nations, Canon and Civil Law.

XIX. Where Ships and Goods are Subject to Reprize, and where not.

XX. When Right is denied, whether life is engaged, and whether perfons refufing to yield may be flain,

XXI. Goods taken by Reprize where the property is altered, and where not.

XXII. where many Ships are prefent, and one becomes Captor, whether the spoil must be divided, or remain his that became Master of the Prize.

XXIII. Where the Grantee of Letters of Reprizal may become a Pirate notwithstanding such Commission.

XXIV. Where a miscaption creates not an injury in the Grantee, nor subjects bim not to answer damage to the sufferers.

XXV. Of the Duies incumbent upon the Captor, and whether the Goods taken are subject to pay Customs.

XXVI. After the debt and damage fatisfied, restitution of the residua ought to be made.

XXVII. contribution, whether it can be by the Laws of England ta him whose Goods are taken by Re-

XXVIII. Where Commissions have been awarded for the inquiring of Depredations, under which the Parties have sometimes obtained satisfaction.

I. R Eprizals known to us by the word Reprisalia, or Letters of Marque, in Law have other appellations,

as Pignoratio, Clarigatio and Androlepsia, &c. in imitation of that Androlepsia, among the Greeks, to feize the three next Citizens of that Place, whither the Murderer had fled, and was always given to him who required revenge of the Offender; the word (Reprifals) is from the French reprendre and reprife, i.e. resumptio, that is, to re take or take again one thing for another, like our Saxon Withernam:

Reprifals are all Though the Act is now become lawful by Law (indeed the one, both in the consent) of Nations , yet must it have its Standard-mark, Common and Civil Law: Re- for the same cannot be done by any private authority, but prisalia est pote- only by the power of that Prince or Republick, whose has pignorandi Subject the injured person is; nor is the same grantable by contra quemli- Authority, but where the party injured has Justice denied bet, de terra de-bitoris data cre-him, or the same illegally delay'd.

ditori pro injuriis & damnis acceptis, vocabular. utriufque Juris. 27 E. 3. Stat. 2. cap. 17.

II. By the Law of Nature no man is bound for anothers Act, but only the Successor of his Estate, for that Goods and Estate should pass with their Burdens, was introduced together with the Dominion of things; hence it is that the Leg, unica, c. Son cannot be molested for the debt of his Father, * neiut null. ex vica- ther the Wife for the debt of the Husband, nor the Husnis.c.neuxor pro band for the debt of the Wife; the same being against pro patre, totis natural equity, that one should be troubled for the debt of another.

mar. & ne fil. tit. Ulpian.Leg.ficut univers. nom. Et : finguli debebunt non tanquam proprium, fed tanguam publicampublici partem. Seneca lib.6.de Benefic. c.20. & cap. 19. c. de Execut. & Exactionibus.

So it is, that no particular men owe, or are obliged sect. and cuique for the debt which the Community owes, that is, if the Community have any Goods; but if Money be lent to a Community, each particular is naturally bound, as they are a part of the whole, if the Stock publick be wanting. If one lends my Country Money (fays Seneca) I will not call my felf his debtor, yet will I pay my share. And again, Being one of the people, I will not pay as for my felf., but contribute as for my Country. Naturally, nay, by the very Roman Lig. nullam, Law, * one Village was not bound for the other, nor one mans Possessions charged for another; no not so much as with the debts publick: the reason being added, That it was against reason for one to be charged with the debt of another.

III. And though by the Law of Nature one mans Goods are not tyed for the debts of another, no nor for those of the Publick; yet by the voluntary Law of Nations, the fame

Of Letters of Marque and Reprisal.

fame might be introduced and brought in, and the fame may fland well with the Laws of Nature; for that might be introduced by custom and tacit consent, when even Sureties without any eaufe, may subject and make liable their Goods and Estates for the debts of a Stranger. So likewife, that for any debt, which any Civil Society, or the Head thereof ought to make good, or because the Sovergion or a Head hath not done right in anothers debt, but hath made himself liable to render satisfaction; such a Society may oblige and make liable all their Goods corporeal or incorporeal, for the reddition of fatisfaction. In Nov. Jul. 52. Hence it was, as the Great Juffinian observes, That this 134.C. unico de custom was constituted by the Nations, grounded on the injuries in fexurgency of humane needs, afferted with the greatest of to necessities: fince without this, great licence would be gi. Juft. Infl. de Juven and tolerated, for the committing of depredations and injuries; especially if only the Goods of Rulers were made liable, who feldom possess any thing, that for satisfaction, the injured may easily come by, whereas those private men, whose Commerces are various, may be catcht for recompence, fometimes with the greatest of ease, and freest from danger. Besides, the Owners of such prize being members of the same Society, might more easily obtain Baldus 3. conf. mutual right for fatisfaction of the injured, and their own 58.Bartol.de refuture indempnity than Foreigners could, who without nam. 9. fuch a tye would be very little regarded.

IV. Besides, the benefit of this obligation was common to all Nations, fo that they which were one time grieved with it, another time might be eased by the same. Moreover, that this custom was received, appears not only out of full Wars which Nations wage against Nations (for in these what is observed may be seen in the Forms of the ancient Denunciations. Populis priscorum Latinorum, ho- Liv. lib. 1. minibusque, priscis Latinis bellum indico facioque. So likewife in the Proposal : Vellent juberent Philippo Regi Macedo- Lib. 31. mbufque, qui sub regno eius effent, bellum indici. And in the very Decree or Proclamation it felf: Populus Romanus cum Gellius lib. 16. populo Hermundulo hominibusque, Hermundulis bellum jussit) c4p. 4. but also where Wars are not come to that fulness of War, yet there is need of a certain violent Execution of Right, that is, imperfect War. Agefilans of old faid to Pharna- Plutarch Agefil. bazus, a Subject of the King of Persia: We, O Pharnaba-

nitation he three ad fled. of the reprenor take ernam:

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Archeologia Attice.

Zus, when we were the Kings Friends, carried our felves like Friends towards all his, and being now become his Enemies, we carry our felves like Enemies; wherefore feeing you will be one of the things that are his we do justly oppose him in you. A species of this fort of Execution by Reprizal was that which the Athenians called Apprehension of men, of which the Attick Law (as Mr. Rons observes) If one have force offered him and dve, his Kinsmen and Friends may apprehend men, till either the Manslayer be duly punisht or vielded; butit is lawful to apprehend three men and no more. By which it plainly appears, that for the debt of the City which is bound to punish her Subjects that have hurt others, is tyed a certain incorporeal right of the Subjects, that is, the liberty of staying where they please, Hered to whom and doing what they will: So that such persons so taken, it was not lawby that Law might be made Slaves until the City did do ful to make war against the A- that which by Law she was obliged to perform. In like rabians, might manner to recover a Citizen taken Captive by manifest injury, are the Citizens of that City, where the injury was done, retained by Reprize. Wherefore at Carthage they would not fuffer Ariston the Tyrian to be taken; for, faid they, the same will befal the Carthaginians at Tyre, and in other Towns of Trade, whereto they often refort.

Liv. lib. 34.

lawfully use

pignoration.

Foleph. lib. 6.

V. A due administration of Justice is not the least fense, wherein Princes are stiled Gods: To deny or delay Instice, is injustice; Tustice is every mans right, who hath not forfeited what he might claim by the Jus Gentium.

If therefore the Party cannot obtain his Definitive Sentence or Judgment, within a fit time against the person of C. Si fententia whom he complains, or if there be a Judgment given ac. 16.de Sent.exgainst apparent Right and Law; yet if no relief can be had, com.in 6.conflit. Leg. qui reflitue- the Bodies or Moveables of his Subjects, who renders not

re, derei vindic. right, may be taken. VI. In the profecution of which there must be,

1. The Oath of the Party injured, or other fufficient proof, touching the pretended injury, and of the certain loss and damage thereby sustained.

2. A proof of the due profecution for the obtaining a fatisfaction in a legal way.

3. Protelation or denial of Justice.

4. A complaint to his own Prince or State.

5. Requilition of Justice by him or them, made to the Snpreme Head or State, where Justice in the ordinary 6. Persicourfe was denied.

5. Perfiftency still, in the denial of Justice.

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All which being done; Letters of Reprizal under fuch cautions, restrictions, and limitations as are consonant to Law, and as the special case may require, may issue not only by the Jus Geneium and Civile, but by the ancient * Magna Charand Municipal Laws of this Kingdom *.

ta C. 30. the latter Clause.

Clauf. 7 Johan. Reg. m. 22. Pat. 15 E. 3. part. 2. dorf. 48. Pat. 23 H. 6. part. 2. dorf. 14, 15.

VII. The Reprizals grantable by the Laws of England, are of two forts, Ordinary and Extraordinary. nary are either within the Realm or without, and are always granted where any English Merchants or their Goods are fpoiled, or taken from them, in parts beyond the Sea by Merchants Strangers , and cannot upon Suit or the Fire. H. N. Bre. Kings demanding of Justice for him, obtain the fame, he 129. Pat. Rolls fhall have upon testimony of such profecution, a Writ out 14. 14 H.6.par. of the Chancery, to arrest the Merchants Strangers of that 1. dorf. 15. 17. Nation their Goods here in England; the which is granta 22.6 M.5,6,7. ble to the Subject opprest of Common Right, by the Chancellor 22 E. 4. par. 2. or Keeper of England, who always in fuch case hath the M. 25. dors. 2. approbation of the King or Council, or both, for his fo &4. doing; the other, which is for fatisfaction out of the Realm, is always under the Great Seal.

VIII. But Letters of Reprizal granted in the Ordinary way for reparation out of the Realm, which are always under the Great Seal of England, cannot be revoked, (though perhaps in point of State there may be a suspending the Execution of them for reason grounded on the publick good) and the reason wherefore they cannot be annulled or revoked is, because after the person injured hath petitioned, and hath according to Law made out by proof his loss, and Letters of Request have gone, and no Life qui restireparation made, then the Letters Patents of Reprizal dic. being fealed, the fame does immediately create and vest a National debt in the Grantee to be fatisfied in fuch manner and by fuch means as the fame Letters Patents do direct out of the Goods and Estates of his Subjects, who rerefuses or protelates to do right (however as the King vide Treaty hath the Legislative power of Peace and War in a publick 1666. Breda Treaty for the Nations good, they may be mortified, and Art. 5. then revok't by the Great Seal in pursuance of that Treaty.)

Quintilian.

Omnia dat qui justa negat.

Cicero ipfe orat pro Balbo.

Est enim aliquid quod non oporteat , etiamfi Milone.

* 4 Hen. 5. c.7.

Nor do I fee it an Act unjust internal to deny the Exel cution of fuch Letters Patents, according to that of S. Paul, All things are lawful for me, but all things are not expedient. Now to the true interpretation of the word lawful strictly, it is to do a thing without violating the rules of Piety and Charity. Now there are many things amongst men which are not internally just, and cannot be done without violating the Laws of Charity, yet are lawful to be done, as in the Law of the XII Tables, the Creditors might divide the Debters body amongst them. So in acquiring fatisfaction for damages, the Lives and Goods of Innocents may be involved in death and destruction, whose peaceable tract in Commerce never gave them knowledge of this privatum Bellum, nor were they Actors in the injury original. 'Tis true externally, according to that of Lucan, That Prince or State that denies me right, gives me all. But the incomparable Gicero observes. That there are some offices to be done to them from whom you have received an injury, for revenge and punishment must have a measure. Now if the Supreme Power does think that the Execution of fuch Letters of Reprizal cannot well be effected without endangering the Peace of both Estates, there may be a just cause to respite the Execution till a time more convenient may occur, for that the lives and Estates of thousands licet, Idem pro may be involved in the repairing of one injury, private and peculiar: nor do I fee the fame to appear repugnant to the Laws politive that have been made for the awarding

those Commissions. 'Tis very true the Statute * reciting. 'That at the grievous Complaints of the Commons of England, who had suffered many wrongs and injuries in the loss of their Ships and Goods upon the main Sea 'against Leagues, fafe-Conducts, and Truces which were broken by the Subjects of other Nations, the fame Par-! liament reciting their willingness to provide remedy and relief for the grieved by spoil and injuries done unto them beyond the Seas, upon Complaint to the Keeper of the Privy Seal (on full evidence shewn) he shall fign Letters of Request to demand restitution and reparation to the Parties grieved: which if not made in convenient time, then the Lord Chancellour of England shall grant Letters of Reprizal in due form of Law for the Indempnity of the persons interessed and injured, Yet this

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this does in no respect restrain the Kings Prerogative and Authority, which he had at the Common Law in the judging the conveniency and time, when to be executed. Nor does the subsequent Statute *, reciting : 'Whereas divers * 14 Ed.4. 64. great offences were often committed against Leagues. Truces, and Amities between the King and other Princes or States, against safe-Conducts and Licences, and against the Laws and Statutes of the Realm (in that case made and provided) to the great flander of our Soveraign Lord the King, and the damages of the good Subjects the Commons of England. It was therefore Ordained, Established, Enacted, and Confirmed by the Confent of the Lords Spiritual and Temporal, and Commons Assembled in Parliament, That all Statutes and Ordinances against the Offenders of Leagues, Truces, fafe Conducts, and Amities shall be in full force, excepting the Clause in the Act which made it High Treason in the second year of Therefore it is plain there were Statutes made for the more effectual providing for the Subject, and Letters of Reprizals, they being granted long * before these memb. 22. Statutes, and the Kings Prerogative not the least dimi- Pat. 15 Ed. 3. nished, but remaining at the Common Law to judge when part. 2. dorf. 48. expedient.

IX. And fince the granting of Letters of Reprizal does not, in the ordinary way for particular fatisfaction, amount to a breach of the Peace, I have thought fit, for the excellency and care that is had in the composing and framing of them, to recommend one that was granted upon fee.

Solemn advice, and for the reasons therein mentioned. X. The Extraordinary are by Letters of Marque, for reparation at Sea, or any place out of the Realm, grantable by the Secretaries of State, with the like approbation of the King or Council, or both; but they are only during the Kings pleafure, and to weaken the Enemy during the time of War, and may at any time be revoked.

XI. As Princes by the Laws of Nations are responsible Machiavel on for injuries publick, so should they by the most prudent A Prince in this ways imaginable prevent those that are private, not suffer- later Age loft ing Foraigners, if pollible, to receive wrongs in their his Country but Countries: For, as the Florentine observes, If a man be for a load of exceedingly offended, either by the publick, or by any other pri-Philip Comines vate hand, in a Foraign Nation, and cannot obtain reparation in Vita Caroli

accord- Ducis Bargund.

Leg. qui resti-

tuere. de rei vindicat.

according to Instice, he will never leave blowing the coals, or cease promoting the injury, till the flame break out into War; in which he cares not if he see the ruine of that Kingdom or State,

where he received his wrongs.

Nor should the Prince or State of the person injured. value his misfortune at fo low a rate, as to deny him Letters of Request, for that were to heap up injury upon injury; but likewise, if Tustice be denied after such request, to arm him with power to take fatisfaction by Reprife. vi manu & militari.

Generally there always proceed Letters of Request, two or three, more or less; and according to the satisfaction, fufficient or infufficient, returned in answer to the same.

Commissions are awarded.

Res judic.pro ve-Judex male judicans pro injuria tenetur. riam Judicis domino rem que debitoris non fuiffet, abstulifsi obligatam sibi; & queritur, an soluto debitori restitui eam oporteret; la restituendam probavit, Leg. fcripturam ff. de distr. pign.

XII. Subjects cannot by force hinder the Execution, even ritate habeter; of an unjust Judgment, nor lawfully pursue their right by yet it is as true, force, by reason of the efficacy of the power over them: But For aigners have a right to compel, which yet they cannot use lawfully, so long as they may obtain satisfaction by Et cum per inju- Judgment. But if that ceases, then Reprizal is let in.

XIII. Now Judgment is obtained either in the Ordinary course, by way of Profecution, or Suit, or Appeal from the fame, after Sentence, or Judgment given, to a higher fet creditor, qua- Court; or else in the Extraordinary way, which is by way of Supplication, or Petition to the Supreme Power: but we must understand that to be, when the matter in controversie is, tam quoad merita quam quoad modum procedendi; not doubtful, for in doubtful matters the prefumption is debitori Scavo- ever for the Judge, or Court.

> But the Reprizal must be grounded on a wrong Judgment given in matters not doubtful, which might have been redressed one way or other; either by the ordinary or extraordinary power of the Country or place; and the which was apparently perverted, or denied.

> But if the matter be doubtful, then otherwise; for in causes dubious or difficult, there is a presumption always that Inflice was truly administred by them, who were duly

elected to publick Judgments.

* Verus debitor, licet absolutus fit,natura tamen debitor perma-

XIV. And yet in this later case, some * are of opinion, that if the cause were dubious, and if the Judgment were against apparent right, the Stranger oppressed is let into

net. Paulus Leg. Julia. D. de cond. indebitote

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his fatisfaction; and the reason is, because the Judge's authority is not the same over Foraigners, as over Subjects, for the reason above mentioned.

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If an English Merchant shall prosecute a Suit in the Ordinary Courts of Law beyond Seas, and Sentence or Judgment shall pass against him, from which he appeals to the Supreme Judgment, and there the first Judgment or Sentence is affirmed, though the Complainant hath received a Judgment against the real Right of the Cause, yet this will be no cause for Letters of Reprizal, though perhaps it may occasion Letters of Request (if there be strong circumstances for the fame) to have a rehearing of the cause.

But if an English man shall recover a debt there, and then the Officer, having the debtor in cultody, will wilfully let the Prisoner escape, and then become insolvent, the fame may perhaps occasion Reprizal.

In England, if a Foraigner brings an Action personal against I. S. and the matter is found special, or general, and the Party prays Judgment, and the Court refuses it; and then the Defendant dyes, and with him the Action, (the justiciam, nature of it being fuch) the Party is here without remedy, Grand Charter; the same may occasion Letters of Reprizals, if it be accompanied with those circumstances that evince an apparent denial of Justice, i. e. as putting it off from Term to Term without cause.

An English man pursues his Right in the legal Courts Case of flaughbeyond Seas, and the Military Governour opposes the ter, Lee against profecution, and by force conveys away the debtor and the Governor his Goods, the Sentence or Judgment is obtained: its ulti- on the Petitimate end being Execution, being thus frustrated, may oc- on of Gould and cafion Letters of Reprizal.

XV. Persons murdered, spoiled, or otherwise dampni- chants in Nova fied in hostile manner, in the Territories or places belonging to that King, to whom Letters of Request are Request were issued forth, if no satisfaction be returned, Letters of sent to the Reprizal may iffue forth; and the Parties petitioners are Great Duke of not in fuch cases compelled to refort to the Ordinary pro- Tascany, for refecution: But the Prince of that Country, against whom the fame are awarded, must repair the damage out of his or their Estates, who committed the injuries; and if that proves deficient, it must then fall as a common debt on his Country.

Nulli vendemus, nulli negabimus, aut deferemus

of Leghorn up-Canham Mer-1570.0n which two Letters of

* After the Massacre at Amboyna, and the other depredations

Such Letters of Request generally allot a time * certain for damages to be repaired, if not, Reprizals to iffue forth: a fingular Example of which you will find here

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committed by the Flemings on the English, his Majesty in 1625. issued forth his Letters of Request to the States of Holland, for satisfaction within 18 months, otherwise Letters of Reprizal. Vide Journals of that year, and Leo Aitzma p. 48. 13. 41. 82. So likewife Letters of Request went to the King of Spain, requiring satisfaction for the depredation committed on the Ship and Goods of Mr. Stampe, who was spoiled and murdered at the Havana, Anno 1674. Vide the Proclamation 1675. of reward promised by his Majesty for the apprehending the Offenders dead or alive.

A Copy of Letters Patents, for fals from the gainst the States General and their Subjects. Chancery. 19º Maii 15º €AT. 2.

HARLES the Second, by the Grace of God, of England, Scotland, France and Ireland King, De-Especial Repri- fender of the Faith, &c. To all Christian Beople to King of Great whom thefe prefents thall come, GREETING: Britain, (under WHEREAS our lobing Subject William Courten Efg. the Great Seal deceased, and his Partners Anno 1643. by the depredaof England) a- tion and boffile act of one Gailand, Commander in chief of two Sbips belonging to the Cast-India Company of the Netherlands, was between Goa and Maccao in the inrolled in the Straights of Malacca, depribed and most injuriousp high Court of spoiled of a certain Ship named the Bona Esperanza, and of ber Lackling, Apparel, and Furniture, and all the Gods and Lading in her, upon a bery hopeful trading Morage to China, which were carried to Batavia, and there all de facto without due Process of Law confiscated; And that also in the same year, another laden Ship of Dur faid Subject, called the Henry Bonadventure, being come on ground near the Mand Mauritius, was there both Ship and Bods feized upon by fome of the Difficers and Ministers, and others under the command of the Caid Call-India Company, and utterly detained from the right Dwners. AND WHEREAS the faid William Courten, and his Affigns in his life time, used all possible endezbours to recober the faid Ships and Gods, and to procure further Juftice against the Malefactours, and pet could obtain no restitution of Catisfaction, whereby they became to be much diffressed and utterly undone in their Estate and Credit: And that thereupon, and upon the most bumble supplication and Addzesses of Francis Earl of Shrewsburg, and William Courten Esquire, Brand-Thild and Beir of the faid Sir William deceafed, Sir John Ayton

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Avton and Sir Edmond Turnor Enights, George Carew & Charles Whitaker Chuires, on the behalf of themfelbes and dibers others interested in the faid two Ships Bona Esperanza and Henry Bonadventure, and in the Offates of the faid Sir William Courten deceased, Sir Edward Littleton Baronet, & Sir Paul Pindar Enight deceated, that make mould take their Cafe into Dur Princely confideration. WE OUT OF A JUST SENSE we then had and fill babe of their unjust SUFFERINGS in that buffness; both by Dur own Letters under OUR SIGN Manual to the States Beneral of the United Probinces, and by Sir George Downing Unight and Baronet, Dur Enboy Ertraozdinary, to whom we gabe Especial command so to do, required fatisfaction to be made according to the Kules of Juffice, and the amity and good correspondence, which whe then defired to conferbe with them firm and inbiolable. AND WHEREAS after leberal Addzelles made to the faid States General by Dur faid Enboy, and nothing granted effectual foz relief of Dur faid Subjects. (whom we take Dur felbes, in Bonour and Juffice. concerned to be fatisfied and repaid) we lately commanded the faid Sir George Downing to intimate and fignifie to the faid States, that We expected their final Antwer, concerning fatisfaction to be made for the faid Slips and Gods by a time then prefited and fince elapted. that The might to gobern Dur felbes thereupon, that Dur afozesaid Subjects might be reliebed according to Bight and Justice; And pet no fatisfactorp Answer bath ben giben, to that We cannot but apprehend it to benot only a fruitless endeabour, but a prostituting of Dur Bonour and Dignity, to make further Application, after to many denials and flightings. AND WHEREAS John Exton, Doctoz of Latos , Judge of Dur Digh Admiraity Court of England, upon Dur Command, to certifie to ans the balue of the loffes and damages fustained bp. the faid William Courten and Partners, whose Interest is noto befled in our lobing Subjects, Sir Edmond Turnor, Bnight, and George Carew Efquire and Partners, barb upon full Gramination and profs thereof made by witneffes in our bigb Court of Admiralty, reported and certiffed under his band, that the same do amount to the fumme of one bundged fifty one thousand fir burdged, and twelbe pounds;

NOW KNOW YE. That for a full restitution to be made to them for their Ships. Gods and Merchandiges, of which the faid William Courten, and the Affigns of the faid William Courten and Partners, were to despoiled as aforefaid, with all fuch Coffs and Charges, as they shall be at for the recobery of the same . The by the Adbice or our Pribe Council babe thought fit, and by thefe prefents do grant Licence and Authozity under Dur Gzeat Seal of England, unto Dur faid Subjects Sir Edmond Turnor and George Carew, their Grecutozs, Administra. toes and Affigus, for and on the behalf of themselbes, and other Werfons intereffed as afozefaid, to equipp, bidual, furnifb, and to fet to Sea from time to time, fuch and fo many Ships and Pinaces as they fhall think fit. PROVIDED always that there be an Entry made and recorded in the Admiralty-Court of the Names of all Ships and Meffels, and of their Burden and Ammuni. tion, and for bow long time they are biqualled; And also of the Pame of the Commander thereof, befoze the fame or any of them be fet forth to Sea; And with the faid Ships and Pinaces by force of Arms to fet upon. take and apprehend any of the Ships, Gods, Monies and Merchandizes of the States General oz anp of their Subjeds, inhabiting within any their Dominions oz Aerritozies, where soe ber the same stall be found, and not in any Port or Barbour in England or Ireland, unles it be the Ships and Gods of the Parties that did the wzong. And the faid Ships, Gods, Monies and Merchandizes, being to taken and brought into tome Port of Dur Kealms and Dominions, an Inbentozy thereof thall be taken by Authority of Dur Court of Admiralty, and Judgment thall be giben in Dur Court of Admiralty by the Judge 62 Judges thereof, for the time being, upon profs made befoze him oz them, that the faid Ships, Gods, Wares, Werchandizes, oz Wonep, did belong to the States General, or any of their Subjects as aforesaid. That they wall be lawful prize to the faid Sir Edmond Turnor, and George Carew, their Grecutors, Administrators and Affigns as afozefaid, to retain and her in their oz any of their Possessions, and to make Sale, and dispose thereof in open Warket or how soeber else, to their and every of their telt Adbantige and Benefit, in as ample manner

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as any time beretofoze bath been accustomed by wap of Reprifal, and to babe and enjoy the fame as lawful prize, and as their own proper Gods: "SO THAT "NEITHER Captain, Mafter noz any of the Com-" panp, that hall ferbe in his own Perfon, og thall pro-"mote and adbance the faid enterpgife in manner and "form aforefaid, thall in any manner of wife be reputed co oz challenged foz any Dffender against any of Dur Latos. And that also it shall be lawful fog all manner " of perfons as well Dur Subjects, as any other to buy "the faid Ships, Gods and Werchandizes fo taken and "apprehended by the faid Captains, Mafters and others. "and adjudged as afozefaid, without any damage, lofs, "hinderance, trouble oz molestation, oz incumbzance, "to befal the faid Bupers, or any of them, in as ample "and lawful manner, as if the Ships, Gods, Mares " and Werchandize, had been come and gotten by the " lawful Traffick of Derchants, or of just prizes in the "time of open war. PROVIDED always, that all Ships, Gods, and Werchandize, taken by birtue of this Dur Commission spall be kept in fafety, and no part of them wasted, spoiled, or diminished, or the Bulk thereof broken, until Judgment habe firft paft as aforefaid, that they are the Ships and Werchandizes of the States General, or come of their Subjects as afozesaid. And it by colour of this our Commission, there shall be taken any Ships, Gods, oz Werchandizes of any of Dur lobing Subjects, or the Subjects of any Prince, or State in god League, or Amity with Us (except the States General) oz their Subjects as afozefaid, and the Gods therein laden, fold and embezelled oz diminished, oz the bulk thereof broken in any place before they thall be adjudged to belong to the States General, or some of their Subjects as afozefaid, that then this Commiffion fhall be of no sufficient Authority to take the said Ships, Gods, and Werchandizes, oz to warrant, oz fabe barmless such as thall receibe, buy og intermeddle therein; but that both the prizes fo taken, and the faid Ship of War, wall be conficated to Dur use. "AND FUR-"THER were do hereby declare that it is Dur will and "pleasure, that this Dur Commission shall remain in de full force and power, to all intents and purposes, until

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" the faid Sir Edmond Turnor, and George Carew, their Crecutozs, Adminifiratozs and Affigns, as afozelaid, "thall by birtue thereof babe by force of Arms appre-"bended, taken, feized, recobered, and receibed from the " faio States General, oz their Subjects, one bundzed " fifty one thousand fir hundzed and twelbe pounds, according to the appraisement to be made by sufficient "Appraifers upon Dath nominated and authozized in "Dur faid Court of Admiralty, of all fuch Ships, Gods, " Wares, and Merchandizes, as shall be taken from the " faid States General, og any of their Subjects, by birtne "of this Commission , or shall otherways receive fatis-" faction of the Debt afozefaid, by Composition to be made " between those of the Cast. India Company of the Ne-"therlands, and the faid Sir Edmond Turnor, and George " Carew , their Grecutogs, Coministratogs and Aligns " as afozefaid. NOTWITHSTANDING it to happen, "the prefent difference between Us, and the States "General depending upon general Repzizals, map be " agreed and composed, and that in the interim a Peace er and god Correspondence map be renewed between Us " and the faid States General : In which case nevertheles, "it is Dur will and pleature, that in the execution of "this Dur Commission no biolence shall be done to the " Perfons of the faid Subjects of the faid States General, "but only in case of reffstance, and that after in cold "blod, the Subjects of the faid States General, if burt " oz wounded, thall be used with all convenient office of "bumanity and kindners. AND FURTHER Dur will "and pleature is, that although it thall bappen that all " hoftility between Us, and the States General and Dur " refpectibe Subjects fall ceafe, pet this Dur Commiffion er (hall remain, and be in full force and power, to the faid Sir Edmond Turnor and George Carew, their Grecu-"tozs, Administratozs, and Assigns, as alozesaid, by bir-"tue thereof to apprehend, take, and feize by force and er Arms, fo many moze of the faid Ships and Gods of es the States General, or any of their faid Subjects, as " befides the faid fumm befoze mentioned hall counterbail, fatisfie, and pap all fich Cofts and Charges as "the fait Sir Edmond Turnor and George Carew, their es Erecutors, Administrators, or Asigns as aforesaid.

Of Letters of Marque and Reprizal.

" fball from time to time make proof to babe disburfed and paid towards the equipping, manning, paping, " furnishing, and bidualling of the faid Ships, to licented "and Authozized as afozefaid, by this Dur faid Commif-" flion to be equipped, manned, furnished, and bidualled by "the faid Sir Edmond Turnor and George Carew, their " Crecutozs, Administratozs and Affigns, as afozelaid, foz "the purpole afozefaid. AND OUR WILL and pleasure is, and the do hereby require Dur Judge of Judges of Dur Bigb Court of Admiralty, for the time being, and all other Officers of the Admiralty, and all other Dur Judge oz Judges, Dfficers, Binifters, and Subjeds whatseeber to be aiding and affishing to the said Sir Edmond Turnor, and George Carew, their Grecutors, Administrators, and Assigns as aforesaid, in all points in the due Execution of this Our Royal Commission, and to proceed to adjudications, and adjudge all Ships, Merchandizes, Monies, and Gods by birtue thereof to be taben according to Our Princely intention, bereby fignified and expressed, and to take care that this Dur Royal Commission be duly executed, and fabourably interpreted and configued in all respects, to the benefit and best ads bantage of the said Sir Edmond Turnor and George Carew, their Grecutozs, Administratozs and Aligns, as afozesaid. IN WITNESS whereof, whe have caused these Dur Letters to be made Patents. Mitness Dur felf at Westminster the 19. dap of May, in the sebentanth Pear of Dur Keign.

BY THE KING.

XVI. It is not the place of any mans Nativity, but his Domicil; not of his Origination, but of his Habitation, that subjects him to Reprize: The Law doth not consider to much where he was born, as where he lives; not so much where he came into the World, as where he improves the World.

If therefore Letters of Reprizal should be awarded against the Subjects of the Duke of Florence, and a Native of Florence, (but Denizied or Naturalized in England) should have a Ship on a Voyage for Leghorn, if a caption should be made, the same is not lawful, nor can the same

be made prize.

XVII. Nor

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XVII. Nor doth it any where appear, that Reprizals can be granted on misfortunes happening to Persons or their Goods, residing or being in Foreign parts in time of War there; for if any misfortune happens, or is occafioned to their effects, or to their persons, then they must be contented to fit down under the loss; it being their own fault, they would not fly or relinquish the place, when they forefaw the Country was subject to the spoil of the

Souldiers, and devastation of the Conqueror.

The Factions of the Guelfs and Gibellins in Florence, warring against each other. The Guelfs obtaining the Victory, and thrusting the Gibellins out of it, after they had taken the City, Dom. cujusdam Hugonis de Papi in hoc Regno Anglia demorantis diruerunt, and plundered his Goods therein, qui Hugo supplicavit Domino Regi, ut inde Itali Mercatores (of that Faction and City then in England) emendas hic sibi facerent; upon which adjudicatum fuit, quod dicti Mercatores dicto Hugoni satisfaciant pro damnis susceptis, & destructione domus sua: upon which a Writ of Errour was brought, and the Judgment was reverfed, in these words; Quod non est consuetudo Anglia de aliqua transgressione facta in aliena Regione, tempore Guerra, vel alio modo - consideratum est, quod totus processus & ejus effectus provocentur, &c.

XVIII. By right (for fo it is now called of rendring like for like) there are many persons exempted, and those whose persons are so priviledged, have also protection for their Goods, some by the Laws of Nations, some by the Civil Law, others by the Common Law; among which baffadors of the Ambaffadors by the Laws of Nations, their Retinue and Goods are exempt, coming from him, who awarded the Reprize, the Laws of Nations not only providing for the Dignity of him that fends, but likewife the fecure going

and coming of him that is fent.

Nor against those that travel for Religion, nor on Students, Scholars, or their Books; nor on Women or Children by the Civil Law: nor those that travel through a Country, flaying but a little while there; for they are done to them, only subject to the Law of the place.

By the Canon Law Ecclesiastical Persons are expressly ex-

the Carthagini- empt from Reprizals.

A Merchant of another place than that against which Repri-

Mich. & E. I. Rot. 53. (in Thefaur. Recept. Regis in Scac.) coram Rege Florentie.

Vide Rot. Vasconia 28 E. 3. Rot. 7. pro Rob. Draper & aliis Civibus Corke in Hibernia.

Rex facifne tu Regium Nuntium Populi Romani Quirit. vafa comitefq; meos. The Am-Romans, being ill used by the Carthaginians, and Scipio's Army having furprized the Ambaffadors of the Carthaginians, was demanded what should be answer'd, not as ans have done to the Romans.

Vita autem fab-

ditorum inno-

ditum fuit apud

aliquos populos,

crederent uni-

Reprizals are granted, albeit the Factor of fuch Goods were of that place, are not fubject to Reprizals.

XIX. Ships driven into Port by storm or stress of weather, have an exemption from the Law of Reprizals, according to the Jus commune, but by the Law of England otherwise, unless expressly provided for in the Writ, or Commission.

But if fuch Ship flies from his own Country to avoid Confiscation, or some other fault, and is driven in by stress of weather, she may then become subject to be prize.

But it is not lawful to make seizure in any Ports, but in his who awarded the Reprizal, or his against whom the fame iffued; for the Ports of other Princes or States, the

Peace of them are to be maintained.

XX. Ships attaqued by those that have Letters of Reprise, and refused to be yielded up, may be assaulted, and centium, ut ex entred; and though it may fall out, not by intention, but tali causa obliby accident, that some of those that so resist, may happen getur, forte creto be flain, yet the fault will lye at their own doors, for hindring the execution of right, and that which the Law coninirum quod most justly approves of.

cuiq; hominum jus vitæ plenum effe in fe, & ad Rem publicam potuiffe transferri, quod minime effet probabile, nec fanctiori Theologia confentaneum. Grotius de Jure Belli lib. 3. c. 2. S. 4. And teems to be of opinion by the Law of Charity, that the profecution of right for a mans Goods, which inevitably must be by the life of man, ought to be omitted. Lib. 2.

cap. 10. Liv. lib. 2.

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XXI. This right of changing of Dominion is fo odious, that in the taking of Goods, it by any possibility the right Owners may have restitution, the same hath been done; and though a larger time than 24 hours may happen between the capture and recapture, and so may pernoctare

with the Captor; yet restitution may be made.

And therefore if he, who hath Letters of Marque or Reprizal, takes the Ships and Goods of that Nation, a Barthol, in Lee. gainst whom the same are awarded, and brings the same si quid Bello D. into a Neuter Nation, the Owners may there feize her, de cap. Ang. & or there the Admiral may make restitution by Law, as well Salic.in Leg. ab of the Ship's Goods to the Owners, as the persons captives Capt. Const. Gall. to their former liberty; for that the same ought first to 20. tit. 13. Art. have been brought infra Prasidia of that Prince or State, 24. conful. Mar by whole Subjects the same was taken.

And with this agrees the Common Law; for a Dunkirker having taken a French Veffel, fold the same at Weymouth, whither

hostibus, c. de

145 237.

Of Letters of Marque and Reprizal.

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Reports , Res que infra Presidia perducta nondum funt, quanquam ab bostibus occupate, Dominum non mutarunt, ex Gentium Fure.

Trin. 17 car. I. Whither it had been driven before it was brought infra in B.R. Marsh's Prasidia Dom. Regis Hisp. it was in such case ruled, that if a Ship be taken by Piracy, or Letters of Marque and Reprizal, and is not brought infra Prasidia of that Prince or State, by whose Subject the same was taken, the same could not become lawful prize, nor were the Owners by fuch a caption divested of their property.

> But if the Caption be by Ships of War, the property will be immediately in the Captors, and never divested, unless afterwards vi, manu & forti be in Battle regained.

XXII. Upon the sharing the Spoil of the captivated Ships, regard is had to the Ships present, not the Captors only; (for his reward must be the incouragement of his Prince, like the Roman Coronas, of which there were various, according to the atchievement of the Conqueror, in imitation of which our Soveraign in his Royal encouraging Medals, follows the example, to his deferving Commanders, as so many Ensigns to inslame Noble Souls to the performing Acts of Glory and Renown) for the profits of Prizes are to be equally divided amongst the Ships present, and not solely to the Captor; therefore if Letters of Reprizal are granted to two Ships, and they happen both of them at Sea to meet a Prize, and the one attaques and enters her, by means of which she becomes absolutely the Conquerors; yet the other hath right to an equal distribution with the Captor both in Ship and Goods, although he did nothing in the Conquest: the reason is, that although he mist the opportunity of taking her, yet the presence of his Vessel armed and prepared for Battle, at the time of taking, became a terrour to the Ship that was so conquered: And by the Law prefumed fine ejus, that the other Ship would not or could be fo taken, which Law hath passed the current, and approbation of the Common Law, as reasonable, just and equitable, and may be pretended or furmised to entitle the party Captor to the making restitution of a moity to his Companion then present.

Mich. 32 Eliz. Somers and Sir Ric. Bulckley's C. Leonard 2. part 181.

> XXIII. But if it should so happen, that those to whom Letters of Marque are granted, should instead of taking the Ships and Goods of that Nation against whom the same were awarded, wilfully take or spoil the Goods of another Nation in amity, this would amount to a downright Piracy. And the persons offenders should for such fault

Tin. 2 Fac. in B. R. Rolls Asrag. fol. 5300

fault create a Forfeiture of their Vessel, and the Owners Sir Fran. Moors must be for ever concluded by the same, notwithstanding Rep. 1 Jac. Waltham vers. fuch Commission.

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XXIV. But that must be understood where such a Caption is done in a Piratical manner; for most certainly, if Letters of Reprizal are granted to a man, and then he devolves the power to another, and the party to whom the power is configned, takes the Ship and Goods of another Nation than against whom the same were awarded, but upon a violent prefumption that he made a right Caption, for that he found the Colours of several Nations in the Ship, the Mariners of several Countries, the Ship of the built of that Country against whom the Letters of Reprizal were awarded, though perhaps upon a Judicial hearing the parties are restored to their Ship and Goods, yet the Captors are not to be punisht Criminaliter, nor the Grantee of the Stat. 4 H.5.c.7. Letters Patents Civiliter: and the reason wherefore it was no injury in the Captors to take, did arise from the probable cause which will excuse the Captors from punishment; (though perhaps it will not from answering of the damage) but it is clear, the Grantees are excused from both, unless privy to the Caption; and the reason is this, for the Letters Patents do not only vest the debt in the party, but do likewise give power to the party to recover,

damage to the party taken, but not the Creditor. XXV. Therefore Letters of Marque or Reprizal issue not without good and fufficient Caution first given for the due observance thereof, according to Law; the transgression of which creates a Forfeiture of the same.

and is a Judicial process to obtain satisfaction vi, manu &

forti from the Subjects of that Prince or State against whom

the same are awarded: So then it will be no more than if

the Creditor delivers process to the Officer to take his Debtor, and he takes a wrong person without the knowledge

of the Creditor, this may subject the Officer to answer

And therefore having taken a Prize, and brought the fame intra Prasidia, the Captor must exhibit all the Shippapers and captived Mariners to be examined in order to adjudication, till when Bulk ought not to be broken without Commission, nor may the Captain of the Captor fuffer an imbezlement of the lading, or fell, barter, or dispose of any part without Commission; for the King hath 3 Eliz. cap. 5. a proportion in all Prizes.

14 Ed. 4. C. 4.

Of Letters of Warque and Reprizal.

12 Car. II. called the Act of Navigation.

Such Goods fo brought in are not subject to pay Customs. XXVI. By the Law of Nations, info facto, the Dominion of the things taken by those to whom Letters of Marque are granted, become the Captors, till the debt and costs, that is, the original damage and subsequent charges are fatisfied; which being done, the residue ought to be restored: So the Venetians used their equity, having taken the Ships of Genoa, did not spoil any of the lading, but preserved the same very carefully, till the debt was paid; which done, restitution was made of the things

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Greg. lib. 9.

entirely, without diminution. XXVII. When for the fault perhaps of a few, a debt

Fitz.H.N.B. fol. 162.0ld.N.Bre.

becomes National, by reason of which the Goods of the Innocent become liable (if taken for fatisfaction) whether by the Law of England, the party ought to have Contribution, is a question most certain by the Common Law, 103. Reg. Orig. where more are bound to one thing; and yet one is put to the whole burden, the party may have process called Contributione facienda for his relief: but when a debt becomes universal or National, it seems otherwise: For if one lends my Country money, I will not call my felf debtor, yet I will pay my (hare *: fo it may feem equitable by the Laws of Charity, though not compellable by the Laws of the Land.

* Seneca Benef. cap. 19.

fol. 176.

XXVIII. Yet when depredations have happened to Foreign Merchants, and complaint hath been made, the Kings of England have often issued forth Commissions to inquire of the same: and so it was done upon the Petition of some Merchants of Genoa, who complained against the Inhabitants of the Isle of Garnsey for a depredation, in taking away and detaining their Merchandize and Goods, to the value of many thousands of pounds, out of a Ship wracked by tempest near that Isle, by which the Commisfioners were impowr'd to punish the offenders, and to make restitution and satisfaction for the damages.

Pat. 26 E. 3. pars 1. M. 16. Dorfo.

The like complaint was made by the Merchants of the Duke of Britain, of certain depredations committed by the Subjects of the King of England, who issued forth the like Dorfo. De cate- Commission, and to give them reparation and damages for ris personis ar- the same; so that if the Subjects of the King of England rest. & capiend. have had their Goods taken by way of Reprize for the fatisfaction of such debt or damage, they may have the benefit of the like Commissions to lick themselves whole out of CHAP. the estates of the offenders.

Pat.de An. 6 H. 5. pars 1. M.9.

III. CHAP.

Df Pzivatærs oz Capers.

by the Laws of Nature. II. Of permission of such by the Laws

of Nations.

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III. The occasion of their first Insti-

IV. Whether it be lawful to undertake such an Employment.

V. Of Commissions general to endamage an Enemy.

VI. Of Commissions special and to Privateers, and the immunities they claim by the same.

VII. Of the care that is obliging on

the issuing forth such Commissions. VIII. Of provisions made as in reference to their regulating, and especially in the last Treaty Marine between England and Holland.

I. Of Privateers, whether allowable | IX. Of Goods subject to Prize, how considered in reference to adjudication general.

> X. Of the Goods considered in reference to adjudication, on occasions

> Special. XI. Of the Lading made Prize,

> of the Veffel, and where other-XII. Whether Ships refusing to yield up to such, life is engaged.

whether it draws in a Forfeiture

XIII. Privateers where subject to punishment, and their actions where occasion a Forfeiture of their Veffel.

XIV. Of things not subject to Spoil.

XV. considerations general on Privateers.

I. Aturally every one may vindicate his own right, Leg. Grous. D. therefore were our hands given us; but to profit de Serv. expert. another in what we can, is not only lawful, but commend- DD. ed Lig. fe able, fince nothing is more serviceable to man than man. tem. De fur. Leg. Now there are divers obligations between men which en- prohib.c.de fare gage them to mutual aid; for Kinfmen assemble and bring Fisc. help, and Neighbours are called upon, and fellow Citizens; for it behoves every one either to take Arms for himself, if he hath received injury, or for his Kindred, or for his Benefactors, or to help his Fellows, if they be wronged. And Solon taught, That Common-wealths would be happy, Barthol. in Leg. wherein every one would think anothers injuries to be his own, at vim. D. de But when War is denounc't, it matters not what obliga. just & Jure tions are wanting, it is enough the Nation is injured in n. 7. 2 8. general; for in that every individual is wronged, and all participate in the indignities and publick damages of his Country; to revenge or prevent which, is the duty of every member of the fame.

quis in servitu-

II. Since

Cicero Offic. 3.

The Son of ca-

to Cenforius ha-

ving served as a

to Pompilius

the General,

Of Privaters or Capers.

II. Since therefore it is not against the Law of Na. ture to spoil him whom it is lawful to kill, no wonder that the Laws of Nations permitted the Goods and Ships of Enemies to be spoiled, when it suffered their persons to be flain.

III. The approbation of which in the Wars of later Ages, hath given occasion to Princes to issue forth Commissions to endamage the Enemy in their Commerce, and to prevent fuch Supplies as might strengthen or lengthen private Soldier out War, to persons to whom the prize or caption become of pay under absolutely the Captors, and that to prevent the spare of Pompilius; the Ships of force to be absent from their respective Squadrons Legion being or Fleets.

disbanded, the By those of Holland they were termed Capers, by the Spayoung man was resolved to re- mard they had their denomination from their respective main with the parts, as Oftenders, Dunkirkers, and the like, in England Army, though called Privateers; how far the actions of those, as in relatibut a Volun-on to the attacking and killing of the Enemy, or spoiling of teer; Catowrote their Ships and Goods are lawful, not being commanded nor hired thereto, may be a question.

that he should give him an Oath the fecond time, giving this reason, Quia priore amisso, jure cum hostibus pugnare non poterat: Cicero fets down the very words of Cato to his Son, whereby he admonisheth him not to enter into Battle; Neque enim jus esse qui miles non sit pugnare sum hofte. Cic. Offic. 1.

> IV. By the Laws of Nations (as hath been faid) it is lawful for every Subject of that Nation in War to feize upon the Enemies Goods and Ships, as also to kill them; for they are after War denounc't by Law, lookt upon as of no account, and if respect be had to natural and internal right, it feems granted to every one in a just War to do those things, which he is consident within the just meafure of warring, to be advantageous to the innocent party: but though there may be fuch authority given, yet what title can they claim or appropriate to themselves of the Ships or Goods of Enemies, (for furely there is nothing owing to fuch, nor are they lawfully called to the fame) unless they can shrowd themselves under the protection of this, that what they do, is only to exact punishment from the Enemy by the common right of men.

> V. Commissions to kill or spoil the Enemy are in two respects, either General or Special: General as in a tu-

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mult; among the Romans the Conful faid, Whofoever would have the Commonwealth safe, let him follow me; and to all particular Subjects is fometimes granted a right of killing in felf-defence, when it is publickly expedient, as on a fudden occasion, and the like.

VI. Special Commissions are such as are granted to Leg. Desertorens. those that take Pay, and are under Orders; the not obey- D. de re milit. ing of which may be punished with death, though the act

fucceeds well.

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Others to repair a particular damage by way of Re- c. Quando liceat prize, the original damage being turned into a National unique Leg. debt, but that satisfied, the other determines, or else to 1. 6 2. those who receive no pay, but go to War at their own charge; and that which is more, administer at their own costs a part of the War, by providing Ships of Force, and all other Military provisions to endamage the Enemy or their Confederates, the which are termed Privateers, &c. as above, to whom instead of pay is granted leave to keep what they can take from the Enemy: and though fuch Licence is granted them, yet may they not convert of their own heads to their private use those Prizes, before the fame have been by Law adjudged lawful to the Captors, and the Admiral had his share.

VII. Nor may fuch Privateers attempt any thing against the Laws of Nations, as to affault or endamage an Enemy in the Port or Haven, under the protection of any Prince or Republick, be he Friend, Ally, or Neuter, for the peace

of fuch places must be kept inviolably.

Sir Kenelm Digby having obtained a Commission against the French, who being in the Streights, was every where honoured as a Cavalier whom the King of Great Britain favoured; in his Voyage he took some Prizes, and coming to Algier redeemed several Captives, whom he took aboard, and placed in the feveral Vessels he had made prize of: the which he so effected, that in a short time he became Illustrissimo of fix Ships of War; coming to Cape Congare, ten leagues from Scandaroone, and having fent a Boat to descry the road, word being brought that there were in the road two Venetian Galeasses, with two other Galeons, two English Ships, and several French Ships, Sir Kenelme being fatisfied of the Prize, resolved to attaque them the next morning, although the Admiral

This matter

was highly debated at the

Council-board

on the com-

plaint of Landy

then Ambassadour for that

Republick at

London, Anno

1629. Vide

Hift. Republic.

Df Pribaters or Capers.

of the Venetians had declared himself Protector of the French, and that he would destroy all the English Ships of War that he should meet, either in that Republicks or Grand Signiors Seas. Sir Kenelme notwithstanding resolved to engage them, and accordingly bore up to them, and the Venetian General weighed Anchor to meet him; Sir Kenelme before he fired, fent a Satty to inform the Venetian of his Quality, and of his Commission, being only to endeavour to make prize of the French, and giving him all the affurance possible of his friendship and respect to the Republick; but before the Satty was answered, the engage. ment was begun by the English, French and Venetian. This action of Sir Kenelme Digby was questioned by the Turk; for that Hostility had been committed by the English in the Grand Signiors road, and thereupon the Bassa of Aleppo and Cady of Scandarone made an Avania or Embargoe on the English Merchants, till reparation was made, for the Venet. fol. 170. breaking the peace of the Port.

VIII. In the granting of fuch private Commissions there is always great care to be had and taken by caution, to preferve the Leagues of our Allies, Newters and Friends, according to their various and feveral Treaties; and therefore at this day by the late Treaty between His Majesty and the States of Holland at London, before any Privateer or Caper can receive Commission, the Commander is obliged to enter before a competent Judge, good and fufficient fecurity by able and responsible men, who have no part or interest in such Ship, in 1500 l. Sterling, or 15500 Gilders; and when they have above one hundred and fifty 1674. In the men, then in 3000 l. or 33000 Gilders, that they will give full fatisfaction for any damage or injuries, which they shall commit in their courses at Sea, contrary to that Treaty, or any other Treaty made between His Majesty ven such secu- and that State, and upon pain of Revocation and annullity of their Commissions, and for answering of such damage

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given

or injuries, as they shall do, the Ship is made liable. IX. If a Suit be commenced between the Captor of a Prize and the Claimer, and there is a Sentence or a Decree given for the party reclaiming; fuch Sentence or Decree (upon fecurity given) shall be put in execution, notwithstanding the Appeal made by him that took the Prize, which shall not be observed in case the Sentence shall be

Commission must always be mentioned that they have girity.

Treaty Marine at

Lond. Decemb. 1.

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given against the Claimers; if torture, cruelty, or bar- These Articles barous usage happens after a caption to be done to the for their expersons taken in the Prize, the same shall iplo facto discharge fuch a Prize, although fhe was lawful, and the dard to all the Captains shall lose their Commissions, and both they and Nations of Exthe offenders be subjected to punishment.

X. Such fort of instruments having made a Caption of Ships bound for an Enemy from Nations Neuter, or in amity with both the warring States; the lading, in order bellum necessato be made Prize, is reduced to these three several heads.

First, Those Goods that are fit to be used in War, under nistrat. which are included Powder, Shot, Guns, Pikes, Swords, and all other instruments and provisions of Armature fit Italica, in quem to be used in the Field or at Sea.

The second, are those things that may be used in time situtiones Impeof War and out of War, as Money, Corn, Victuals, Ships, and the like.

And the last, are those Goods that are only fit for luxury and pleasure.

XI. The first are accounted Prize without Controversie; He is to be accounted an Enemy that supplies an Enemy with things necessary for the War.

The second is to be governed according to the state and Cambden An. condition of the War; for if a Prince cannot well defend 1591. By the himself, or endamage the Enemy, without intercepting fourth Article of fuch things, necessity will then give a right to the condemnation. And fo Queen Elizabeth did the Hansiatick those Goods Fleet taken, laden with Corn for Lisbon, upon considera- that may be ution of the state of the War, the same became prize.

cept Ships) may not upon any account be called prohibited, nor subject to a condemnation, except carried to places befieged, Art. 4. See John Ment sus his Danish History concerning the Prohibiting of Goods by those Northern States. Vide postea, the Grand Prize condemned by Queen Elizabeth in tit. Customs, and vide tit. Ships of War, §. 24-

The last become free, and (as we have before mentioned) according to that of Seneca; I will not help him to Money to pay his Guards; but if he shall desire Marbles and Robes, such things burt not others, only they minister to his luxury: Souldiers and Arms I will not supply him with; if he shall seek for Players and recreations to soften his fiercenes, I will gladly offer to him: Ships of War I would not fend him, but such as are for pleasure and oftentation of Princes Sporting in XII. 15 the Sea, I will not deny.

cellency are fit to be a Stanrope. Art. IA.

In hostium effe

partibus, qui ad ria hosti admi-Confulat. Maris relatæ sunt conratorum Gracia, &c. cujus libri tit. 276.

at the Treaty at Lond. 1674. fed out of War as in War (ex-

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And perfons to XII. If a Privateer take a Ship laden wholly with countempting to terband Goods, both Ship and Goods may be subjected, and made prize.

fome cases be punished; but if the same be done by necessiry of obedience, though the parties are much to be blamed, yet are they not to be punished; and so it was with those which relieved Sir John Old-Castle with provisions, who being taken, were discharged.

But if part be prohibited Goods, and the other part is not prohibited, but such as according to the necessity of Article in the War shall be so deemed, the same may draw a conservery at Lon-quential condemnation of Ships, as well as lading.

don, if the Skipper will deliver is meerly luxurious and for pleasure, only the Goods proout the prohibited Goods,
the Ship may

If part of the lading is prohibited, and the other part
per will deliver is meerly luxurious and for pleasure, only the Goods prohibited become prize, and the Ships and the remainder
become free, and not subject to infection.

proceed with the rest in their Voyage or course, as they please, and the Ship shall not be brought into Port.

Mc reus est morMc reus est mor
XIII. If such Ships shall be attaqued in order to an exatis aliena, inmination, and shall resuse, they may be assaulted; like a
quit Augustihouse supposed to have Thieves or Pirates in it, resuses to
nus, qui sui posyield up their persons, may be broken up by the Officer,
supposed to have Thieves or Pirates in it, resuses to
nus, qui sui posyield up their persons, may be broken up by the Officer,
ambitum cirand the persons resisters may be slain.

sumduxet : st aliquis ex epsorum usu percussus intereat. Publ. Epift. 154.

XIV. But if any of these Privateers wilfully commit any spoil, depredations, or any other injuries, either on the Ships of our Friends or Neuters, or on the Ships Lsg. 5.de Navi- or Goods of our own Subjects, they will notwithstandicul. C. lib. 3. ing they are not in pay, be subjected in some cases to Trin. 3 Jac. in death and other punishments, according to the demerits B. R. Rolls 5. p. of their crimes, and perhaps may subject their Vessel to Forseiture.

And though by the Law of Nature the Goods of Enemies are to be spoiled as well as their persons slain, yet some Goods and things seem exempted, and ought not to be spoiled, and therefore it is not lawful to land on the Territories of our Enemies, to spoil places dedicated to God: though Pomponius observes, when places are taken by the Enemy, all things cease to be Sacred; the reason given is, because the things which are called Sacred, yet are they not indeed exempted from humane

Pompon. Leg. cum loca D. de Religiosis. jected, ugh the th those

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uses, but are publick. The Townsmen, saith Tacitus, open- Tacit. Annal. ing their gates, submitted themselves and all they had to the 13. Romans, themselves were spared, the Town was fired. Pompey entred the Temple by the right of Victory, not as a suppliant, but as a Conquerour: and though that priviledge may feem right by the Law of War to a Soveraign, or a General, that intends a Conquest, yet that power may not feem most part condevolved to him, whose Commission is cautionally to en- fift in taking damage the Enemy only, as in reference to his commerce andoverthrowand provisions of enabling them to withstand the War: ing Cities, Certainly, that Conquest is poor, whose Trophies and which work is Triumphs are made up with Roofs, Pillars, Posts, Pulpits, out injury of and Pews, and the spoil of Agriculture. Hence it is, the Gods, the that at this day the King of France in Germany and the Ne- walls of Cities therlands accepts of Contributions, by which the Cities and Temples of and Churches are not only spared, but even the Country-take in the men plough and fow as quietly as if there were no Armies fame ruine, the in their Territories at all.

ctories for the not done withthe Gods par-Citizens and Priests equally

flaughtered; nor is the rapine of facred riches and prophane unlike: fo many are the facriledges of the Romans as their Trophies, so many are their Triumphs over Gods and Nations: and then goes further, Tot manubie quot manent adhuc simulachra captivorum deorum. Mox & bene, Quod fi quid adverfi Urbibus accidit, eadem clades Templorum que & mænium fuerant.

Even upon the same reason, that the instruments of Husbandmen are not to be taken for a pledge by the Civil nor Common Law. Leg. exeunt. C. qua respign. Coke sup. Littleton 47.

XV. Most certain, those forts of Capers or Privateers. being Instruments found out but of later Ages, and it's well known by whom, it were well they were restrained by confent of all Princes; fince all good men account them but one remove from Pirates, who without any respect to the cause, or having any injury done them, or so much as hired for the fervice, spoil Men and Goods, making even a trade and calling of it, amidst the calamities of a War, and driving a commerce and mart with the spoil, and that with as much peace and content, as if they had never heard of tears, blood, wounds or death, or any fuch thing: fuch to expose their lives against Ships of the like kind, were both honourable and just, or those that should aid the Enemy with Goods prohibited as afore, fuch prifes were possessions most noble; but the Goods, Ships and

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CHAP. IV. Df Piracy.

I. Pirates what.

II. Of the duty incumbent on Princes and States as in reference to such, and whether liable for the damages they commit.

III. Pirates where they hold a Society, bow the same is esteemed in Law, and of Equality held by them.

IV. Whether capable of the Solemnities of War, and Right of Lega-

V. Whether capable of succour by the Laws of Nations.

VI. Ships where liable for redemption of the Master, remaining pledge for Ship and Lading, and where not.

VII. Oath given to pay a reward for redemption of a Ship from Pirates, whether the same ought to be performed.

VIII. Foreigners spoiled by English Pirates may pursue for Justice within the Statute of 28 H. 8.

IX. So where the Subjects of any Foreign Nation committing the same, may be punished by the same Sta-

X. Piracy committed by the Subjects of a Nation in Enmity with the crown of England among English Pirates, cannot be punished by the Statute of 28 H. 8.

XI. Committed on the British Seas punishable by the Crown of England, and none other.

XII. Where committed on the Ocean, whether they may be executed without tryal, by the Law of Na-

XIII. The like where the Judge refuses to try them, or in case of emergency whether Justice may be executed immediately.

XIV. Pirates attempting to rob, commit a murder, whether all principals, or only the flayer, and the reft Accessories.

XV. If the Subjects of one Foreign Nation rob another, and bring the Booty into England, whether the party injured may proceed Criminaliter for punishment, and Civiliter for restitution.

XVI. Pirates take men, and no part of the Lading, if Piracy.

XVII. Where a Master may commit Piracy of those things that are committed to his charge, and where

XVIII. where Piracy may be, though there be nothing taken: and where Goods are taken out of a Ship, and no body in it.

XIX. The Captain and Crew of a Veffel having a Commission of Reprize commit Piracy, whether those that imployed them ought to answer the damage.

XX. Where Goods taken at Sea amount not to Piracy.

XXI. Goods taken and retaken by & Friend, whether the property of the Prize is altered.

XXII. Of Restitution of Goods taken by Piracy by the Laws of England;

XXIII. Of Restitution resused by the Laws of England.

XXIV. Of Piracy as in reference to matters Criminal, and how punishable at this day by the Laws of England.

XXV. The Statute of 28 H. 8. how it operates in cases of Piracy.

XXVI. Of

XXVI. Of Pardons in tales of Pi- 1 XXX. Of Goods taken at Sea and racy, Forfeitures, Corruption of

blood, and Clergy.

XXVII. Whether a Depredation committed in a Port within this Realm remains Robbery, at the Common Law, or Piracy by the Law Marine.

XXVIII. Whether Clergy is allowable for a Depredation in a Port, and if Pardons touching the Same.

XXIX. Of the operation of the Attainder in cases of Piracy.

brought to Land, whether the party is punishable by our Law.

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XXXI. If the Admiralty claims in ther an original or a concurrent Furisdiction, the Courts above will not intermeddle.

XXXII. Satisfaction of old, bon made to persons spoiled at Sea.

XXXIII. Persons unjuftly detainel in custody upon suspicion of Piracy the Courts above on a Habeas Corpus may, if there be juft caufe, in ther bail or discharge them.

I. A Pirate is a Sca-Thief, or Hoftis humani generis, who for to enrich himself, either by surprise or open force, fets upon Merchants and others trading by Sea, ever spoiling their Lading, if by any possibility they can get the mastery, sometimes bereaving them of their lives, and finking of their Ships; the Actors wherein Tully calls Enemies to all, with whom neither Faith nor Oath is to be kept.

II. By the Laws of Nature Princes and States are responsible for their neglect, if they do not provide Ships of War, and other remedies for the restraining of these fort of Robbers; but how far they are bound either by the Civil Law or Common Law of this Kingdom, may be some question: for it is agreed they are not the cause of the unjust spoil that is committed by them, nor do they partake in any part of the plunder; but if a Prince or State should fend forth Ships of War or Commissions for Justice; and if reprise, and those instead of taking prises from the Enethey have any my, turn Pirates, and spoil the Subjects of other Friends, Estate, the same there has been some doubt, whether they ought not to ought to go towards the re- make fatisfaction to the parties injured, in case the offenparation of the ders should prove unable: surely there is no more reason for this latter than the first; seeing Princes and States may give all their Subjects power to spoil the Enemy, nor Caution is come is fuch a Permission any cause why damage was done to our Friends, when even private men, without any fuch

ders could be found, they ought to be yielded up to damage.

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dume to fer forth without a Commission.

If the offen-

ving forth of fuch Commissions to prevent the same, if possible. They are generally restrained by Proclamation when a War breaks forth, and commanded, that none prepermission,

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permission, might send forth Ships of War; besides it is impossible that Princes or States should foresee, whether they would prove fuch or not; nor can it be avoided, but we must imploy such, otherwise no Army or Fleet could be prepared; neither are Kings to be accused if their Souldiers or Mariners wrong their Confederates, contrary to their commands, though they are obliged to punish and yield up the offenders, and to see that legal reparation be made out of the Estate of the Pirates. Letters of Marque or Reprizal be granted out to a Merchant, and he furnishes out a Ship with a Captain and Mariners, and they instead of taking the Goods or Ships of that Nation against whom their Commission is awarded, of that Nation against whom their committees the Ship and Goods of a Friend, this is Piracy*; *Constitutions and if the Ships arrive in England, or in any other of His tom. 3. tit. 3. Majesties Dominions, the same shall be seized, and the Anni 1583. owners for ever lose their Vessel +.

* Constit. Gallie cap. 44. Vide etiam tom. con-

flit. 3. tit. 2. conflit. Anni 1543. cap. 44. Vide 21. Article at the Treaty at Breda between England and Holland, and the 15. Article in the Marine Treaty at London 1674. + Trin. 7 Jac. in B. R. Rolls fol. 530. Vide Sir Francis Moores Reports, I Jac. Waltham versus Mulgar.

From hence it is, that Princes and States are very cautious upon this we call Jure Belli privati, how they engage themselves, or those who seek reparation for wrongs before received; for the person injured governs not the action, but devolves the power to some other hired for that particular use, whose Law is no more than this, There is most right where is most pay or prize. Unhappy state of man, whose support and living is maintained only by expoling himself to death, a Calling that nothing can make honest, but the highest necessity or pious charity! And therefore those that iffue forth such fort of Commissions, generally take Caution for their returning within a convenient time, and not to wander in that unhappy condition.

III. Though Pirates are called Enemies, yet are they not properly fo termed : For he is an Enemy , fays Cicero, Leg. Hoftes de who hath a Commonwealth, a Court, a Treasury, consent and verb. signific concord of Citizens, and some way, if occasion be, of Peace and League; and therefore a Company of Pirates or Freebooters are not a Commonwealth, though perhaps they

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Lee. Hostis de Captivis.

may keep a kind of equality among themselves, without which no Company is able to confift; and though it is feldom they are without fault, yet they hold fociety to maintain right, and they do right to others, if not in all things according to the Law of Nature (which among many people is in part obliterated) at least according to agreements made with many other Nations; or according to Custom; So the Greeks at what time it was accounted lawful to take spoil at Sea, abstained from slaughter, and depopulations, and from stealing Oxen that plowed, as the Scholiast upon Thucydides observes; and other Nations living also upon the spoil when they were come home from Sea, sent unto the Owers to redeem (if they pleased at an equal rate) what they were robbed of at Sea: and at this day, if a Ship hath the Emperour of Barbary's protection, the Pirates of that Nation (if they feize) will restore, and if there be no protection, yet if taken within fight of their Castles, the Prize is not absolute; but if resistance is made, and there be a Caption, she then becomes the Captors for ever, as the price of blood. IV. Again, Pirates that have reduced themselves into

Tunis, and the like, some do conceive ought not to obtain the rights or folemnities of War, as other Towns or * Constantino-

places: for though they acknowledge the Supremacy of the * Port, yet all the power of it cannot impose on them ple generally so more than their own wills voluntary confent to. The famous Carthage having yielded to the Victorious Scipio, did in fome respect continue, and began to raise up her drooping Towers, till the knowing Cato gave counsel for the total extirpation; out of the ruines of which arose Tunis, the revenging Ghost of that famous City, who now, what open Hostility denied, by Thieving and Piracy continue; as stinking Elders spring from those places where noble Oaks have been felled; and in their Art are become

a Government or State, as those of Algier, Sally, Tripoli,

fuch Masters, and to that degree, as to disturb the mightiest Nations on the Western Empire; and though the same is fmall in bigness, yet it is great in mischies: the consideration of which put fire into the breast of the aged Lewis IX.

to burn up this nest of Wasps, who having equipt out a Fleet in his way for Palestine, resolved to besiege it: whereupon a Council of War being called, the question was,

whether

Pullers Holy War lib. 4. cap. 29.

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whether the same should be summoned, and carried, it should not; for it was not fit the solemn Ceremonies of War should be lavished away on a company of Thieves and Pirates. Notwithstanding this, Tunis and Tripoli and their Sifter Algier do at this day (though Nests of Pirates) obtain the right of Legation, and Sir John Lawfon did conclude a Octobr. s. Anno Peace between his now Majesty by the Name of the most 1662. But by Serene and Mighty Prince Charles the Second, by the Grace the Turk in of God King of Great Beitain, France, and Ireland, De- these words, Confirmed and fender of the Faith, &c. and the most Excellent Signors Sealed in the Wahomet Bashaw, the Diban of the Poble City of Tu- presence of nis, Bagge Buftapha Dei, Mozat Bei, and the rest of the Almighty God, Souldiers in the Kingdom of Tunis: and with them of Tri. in our House in poli by Sir John Narborough * by the Name of the Palil Ba of Tunis, the thato. Ibrahim Dep, Aga, Diban, and Governours of the last day of the Noble City and Kingdom of Tripoli in Barbarp. So that Moon Deleadt now (though indeed Pirates) yet having acquired the re- and the year putation of a Government, they cannot properly be of Higira 1085, esteemed Pirates but Enemies.

and (after-

wards, May 1. 1676. by the Turks) being the 26. day of the Moon Zaphire, and the year of the Hegira 1087.

V. Pirates and Robbers that make not a Society, i.e. fuch a Society as the Law of Nations accounts lawful, are not to have any fuccour by the Law of Nations. Tiberius, when Tacfarinas had fent Legates to him, he was displeased that both a Traitor and a Pirate should use the manner of an Enemy, as Tacitus hath it; yet fometimes Tacit. Annal. 3. fuch men (Faith being given them) obtain the right of cafar lib. 3. de Legation as the Fugitives in the Pyrenean Forest, and the Bello Civ. Bandits at Naples; and Solyman the Magnificent, having Hist. Republ. entertained Barbaroffa the famous Pirate, fent word to Venet. fol. 91. the Venetians, that they should use him and esteem him no more as a Pirate, but one of their own Port.

VI. If a Ship is affaulted by a Pirate, for redemption of which the Master becomes a Slave to the Captors, by Rhod. de jacen. the Law Marine the Ship and Lading are tacitly obliged 1.2. S. fi navis for his redemption by a general contribution. But if a à Piratis re-Pirate shall feign himself stronded, and to decoy the Mer. dempta. chant Man for his relief, shall fire his Guns, or wave his Colours, who accordingly varies his course for his affistance, and the Pirate enters him, for redemption of

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which he becomes a Slave to the Pirate, there contribution shall not be made, because it was his folly to be so

decoy'd.

VII. By the Civil Law a Ranfom promised to a Pirate, if not complied with, creates no wrong, and the reason given is, for that the Law of Arms is not communicated to fuch, neither are they capable of enjoying that priviledge which lawful Enemies may challenge in the Caption of another: however this hath its measure; for a Pirate may have a lawful possession, the which he cannot be denied (if injury or wrong be done him) to claim the benefit of Law, but the reason of that springs from a more noble Fountain, which is his taking a legal course, for by that he hath submitted to the Magistrate, and paid obedience to the Laws in demanding Justice; besides, the same is not done so much in favour of the Pirate as in hatred of him who first commits the wrong. Augustue the Emperour having proclaimed a reward of ten Sesterces to be given him that fould bring in Coracotas the famous Spanish Pirate, who having notice of the fame, voluntarily comes and prefents himself before the Emperour, and demands the promised reward, and the question was, whether death or the Sefterces were to be his reward: The Emperor gave Judgment, that the fumm promised should be paid him, for otherwise in taking away his life he should deceive him of the fumm promised, which would, in effect, violate the publick Faith given to him, who of himfelf offered himfelf unto the tryal of Justice.

A Pirate attaques a Merchant Man, and enters her, for redemption of which the Master gives his Oath, at a time and place to pay the Pirate a summ certain; by some it hath been held, that the Master commits not perjury, if the price promised for redemption be not brought according to the Oath, because a Pirate is not a determinate, but a common Enemy of all, with whom neither Faith nor Oath is to be kept: but that is no reason for the associated the Vow: for though the person be descient, yet the Just God, is concerned; nor can that person that hath promised a thing, satisfie his conscience after he hath once delivered it to him, to recover it back again; for the words in an Oath, as to God, are to be understood most simply, and with effect; and therefore

Bodin l. I. C. I

Leg. bona fides. D. Expos.

he that returned fecretly to the Enemy, and again departed, made not good his Oath concerning his return.

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VIII. If an English Man commit Piracy, be it upon the Subject of any Prince or Republick in amity with the Crown of England, they are within the purview of the Stat. of 28 H. 8. and so it was held where one Winterson, On a Commis-Smith, and others had robbed a Ship of one Maturine Gan. fion grounded tier, belonging to Bourdeaux, and bound from thence with on the Stat. a-French Wines for England, and that the same was Felony warded. Rott-Adm. 28 Elizby the Law Marine, and the parties were convicted of the m. 23. fame.

IX. And so it is if the Subject of any other Nation or Kingdom, being in amity with the King of England, commit Piracy on the Ships or Goods of the English, the same is Felony, and punishable by virtue of the Stat. and so it was adjudged, where one Careless, Captain of a French Man of War of about 40 Tuns, and divers others, fetting upon four Merchant Men going from the Port of Brifol to Caermarthen, did rob them of about 1000 l. for no 28 Eliz. which he and the rest were arraigned, and found guilty of m. 24. the Piracy.

But before the Stat. of 25 Ed. 3. if the Subjects of a Fo. Normandy was reign Nation and some English had joyned together, and lost by King had committed Piracy, it had been Treason in the English, of the ligeance and Felony in the Foreigners: And so it was faid by Shard, of the King of where a Norman being Commander of a Ship, had, toge- England, and ther with some English, committed robberies on the Sea, they were as now accounted being taken, were arraigned and found guilty; the Nor- Aliens. 42. Afman of Felony, and the English of Treason, who accord- file place 25. per ingly were drawn and hang'd. But now at this day they shard. Vid. both receive Judgment as Felons by the Laws Marine.

X. If the Subjects in enmity with the Crown of England be Sailers aboard an English Pirate with other English, and then a robbery is committed by them, and afterwards are taken, it is Felony without controversie in the English, but not in the Strangers; for they cannot be tryed by virtue of the Commission upon the Statute, for it was no Piracy in them, but the depredation of an Enemy, for which they shall receive a tryal by Martial Law, and Judgment accordingly.

XI. Piracy committed by the Subjects of the French King or of any other Prince or Republick, in amity with

2 H. S. cap. 6.

the Crown of England upon the British Seas, are punish-Selden Mare Clauf. lib. I. able properly by the Crown of England only, for the Kings cap. 27. Cafe of of the same have istud regimen & dominium exclusive of the Reginor Grim-Kings of France, and all other Princes and States whatbald in tempor. Ed. 1. Cited in loever.

4. Instit. fol. 142. in c. of the Admiralty.

Injicere manum parce traxerunt debitum fibi, & fermone usus eft citur, quoties nulla judicis au-Etoritate , rem nabis debitam vindicamus. Serv. Æn. 11.

XII. If Piracy be committed on the Ocean, and the Pirates in the attempt there happen to be overcome, the Captors are not obliged to bring them to any Port, but juris; nam ma- may expose them immediately to punishment, by hanging nus injectio di- them up at the Main-yard end before a departure; for the old natural liberty remains in places where are no judgments.

> And therefore at this day, if a Ship shall be on a Voyage to the West-Indies, or on a Discovery of those parts of the unknown World, and in her way be affaulted by a Pirate, but in the attempt overcomes the Pirate, by the Laws Marine the Vessel is become the Captors; and they may execute such Beasts of prey immediately, without any solemnity of condemnation. If we respect expletory Ju-Itice, it cannot be denied, but for the conservation of Ship

> and Goods, a Pirate invading may be flain, for the inequality between these things and life is made up in favour of the innocent, and by hatred to the injurious: whence

Oratione in A-

it follows, if we regard only that right, that a Pirate running away with stoln Goods, if they cannot otherwise be recovered, may be funk. Demosthenes said, It is very hard and unjust, and contrary both to the written Laws and the common Rules amongst men, not to be suffered to use force against him who in a hostile manner hath taken my Goods.

.xg. extat. D. quod metus.

ristocratem.

XIII. So likewise, if a Ship shall be assaulted by Pirates, and in the attempt the Pirates shall be overcome, if the Captors bring them to the next Port, and the Judge openly rejects the Tryal, or the Captors cannot wait for the Judge without certain peril and loss, Justice may be done upon them by the Law of Nature, and the same may be

Honorius & Theodofius: id- there executed by the Captors. circo Judicio-

rum vigor Jurifque publici tutela in medio conflituta, ne quifquam fibi ipfi permittere valeat ultionem. Leg nulli C. de Judais.

Caius Cafar being but a private man pursued the Pir rates, by whom he formerly had been taken, and spoiled by them, and making up to them with fuch a Fleet as he possibly in haste could get ready, attaqued, burnt, and destroyed their Ships, and the men he brought back to Pintarch in an Anchor, where repairing to the Proconful to do Justice, Cafar. and he neglecting, himself returned back, and there hang'd

them up.

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XIV. If a Pirate at Sea affault a Ship, but by force is prevented entring her, and in the attempt the Pirate happens to flay a person in the other Ship, they are all Principals in such a murder, if the Common Law hath Jurisdiction of the cause: but by the Law Marine, if the parties are known, they who gave the wound only shall be principals. and the rest accessories *; and where they have cognizance * Ralph Wilof the principal, the Courts at Common Law will fend them liams indicad their accessory, if he comes before them t.

for the murder of one John

Terrey; and Bridges, Black, and others as accessories. Rott. Admir. 28 Eliz. M. 24. † Yelverton fol. 134, 135.

XV. If a Spaniard robs a French Man on the High Sea, both their Princes being then in amity, and they likewife Res que intra with the King of England, and the Ship is brought into the nondum the Ports of the King of England, the French Man may funt, quanquan proceed Criminaliter against the Spaniard to punish him, abhostibus occuand Civiliter to have Restitution of his Vessel: but if the pate, dominum Vessel is carried intra Prasidia * of that Prince, by whose Gentium jure. Subject the same was taken, there can be no proceeding Grotius de Ju-Civiliter, and doubted if Criminaliter; but the French Man + re Belli ac Pamust resort into the Captors or Pirates own Country, or cis,cap.9.5.16. where he carried the Ships, and there proceed.

* Trin. 17 Car. in B. R. Marsh's

Reports. + Leg. Hoftes & Leg. Latrones D. de Cap. Leg. poslim. à Piratis cod. Tit.

A Dutch Man, but Naturalized by the Duke of Savoy, The Caption and living at Villa Franca in his Dominions, procures a was in 1665. Commission from the States of Holland, and coming to Le- passed May 13. ghorn, there rid with the Colours and Enfigns of the Duke 1670. upon of Savoy; the Ship Diamond being then in Port, and having which there received her lading, was afterwards in her Voyage home was an Appeal furprised by that Caper, and brought into Villa Franca, to the Duke of and there condemned and fold to one Poleman; which thing came of Ship afterwards coming for England, the Plaintiffs having it. Rott. Admir.

Adjudication notice, in an supradict.

notice, made a feizure, and upon Tryal Adjudication passed for the Plaintiffs, the original Proprietors: For though the Ship of War and the Captors were of Savoy, and carried thither; yet being taken by virtue of a Dutch Commission, by the Law Marine, she must be carried infra Prasidia of that Prince or State by virtue of whose Commission the was taken. Nor can fuch carrying of the Enfigns or Colours of the Duke of Savoy, who was then in amity with the Crown of England, or the Commander, though a Subject of that Prince, make him a Pirate, or fubject them or those to whom they have transferred their interest of the Prize, any ways to be questioned for the same Criminaliter; for that the original quoad as to the taking was lawful, * as one Enemy might take from another; but Civiliter the same, for that the Captor had not entitled re belli ac pacis, himself to a firm possession t. And therefore in all cases where a Ship is taken by Letters of Marque or Piracy *, if the same is not carried infra Prasidia of that Prince or State * Mich. 8 Jac. by whose Subject the same was taken, the Owners are not divested of their property, but may reseize wheresoever they meet with their Vessels.

* Bulftrod. 3. part. fol. 28. Case of Samuel Pellagy. + Grotius de julib. 3. cap. 9. . 15,0 16. in B. R. Brownlow 2. part. Westons C.

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XVI. If a Pirate attaques a Ship, and only takes away fome of the Men, in order to the felling them for flaves, Co. 3. Inft. 109. this is Piracy by the Law Marine; but if a man takes lib.8. fol. 32. 6. away a Villain or Ward, or any other Subject, and fells Black Mail and them for flaves, yet this is no robbery by the Common

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* ff. Naute Caup. 12 Ed. 4. 9. Naute Caup. fect. recepit.

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cap. 13.

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If a Ship shall ride at Anchor, and the Mariners shall be part in their Ship-Boat, and the rest on the shore, and 14 E. 3. Cor. none shall be in the Ship; yet if a Pirate shall attaque her 115.

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XIX. A Merchant procures Letters of Marque or Reprife, and then delivers the Commission to persons to endeavour a fatisfaction; if such persons commit Piracy, the Vellel is forseited without controversie: but the Merchant is Trin. 7 Fac. in no ways liable to make fatisfaction; for though the Supe. B. R. Rolls Ariour shall answer for the actions of his Ministers or Ser- bridg. 530. vants, yet that is introduced by the Civil Law; but this com. 3. tit. 3. question must be decided by the Laws of Nations, by virtue constit. anni of which fuch Commissions are awarded or granted, the 1583. c. 44. which does exempt any man to answer for the damages Vide Sir Franof his fervants, unless he foreknew that they would commit fuch a Piracy or spoliation, or any way have abetted vers. Mulgar. or consented to the same, which right may be forseited, and the Civil Law let in to acquire fatisfaction : And yet Vide the very in the Case of Sir Edmund Turnor and Mr. George Carew, Letters of Rewho having Letters of Reprifal against the Dutch, Mr. prizal in cap.2. Carew by Indorsement on the back-side of the Letters Pa- Letters of tents did nominate and appoint one Tyrence Byrne to exe. Marque, fol. cute and perform all fuch acts and things as by force of the 32. Letters Patents he might lawfully do: Tyrence Byrne provides Ship and Crew, and being at Sea takes a certain Ship belonging to Bruges called the Godelife, and there was fome probable cause of suspicion, yet not enough to warrant a condemnation: Whereupon the Owners having Hill. 30, 31. had sentence of Restitution libelled in the Admiralty against car. 2. at Ser-Sir Edmund Turnor, Mr. Carew and Byrne for damages; geants Inn. upon which a fentence was given against the Defenders, who Appealing the Delegates confirmed the first fen-

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ait.D. de incen- months.

Lee. 2. fest. cum may spare them) this is not Piracy; but then the party intendem; Dad must pay ready Money for such things, or give a Note or 1. Rhod. Leg. quo Bill for the payment of the value, if on this fide the Straits naufrag. S. quod of Morocco, within four months, if beyond, within twelve

dum, feet. item. D. ad Leg. Aquiliam. 27 H. 8. cap. 4.

nius de acqu. rei dom.

XXI. By the Law Marine, if Goods are taken by a Pi-Per Leg. Pompo- rate, and afterwards the Pirate attaques another Ship, but in the attempt is conquered, the Prize becomes absolutely the Captor's, faving the account to be rendred to the Admiral. And it is accounted in Law a just caption of whatfoever may be got or taken from fuch Beafts of prey, be the fame in their own or in their Successors posses-But then an account ought to be rendred to the fion. Admiral, who may (if they happen to be the Goods of the Fellow-fubject of the Captors, or of Nations in amity with his own Soveraign) make restitution to the Owner, the costs and charges, and what other things in equity shall be decreed to the Captor, first considered and deducted.

Per Leg. Mulier ea. cap. & poft.

27 E. 3. C. 13.

XXII. By the Statute of 27 Edw. 3. cap. 13, if a Merchant lose his Goods at Sea by Piracy, or Tempest (not being wrackt) and they afterwards come to Land; if he can make proof they are his Goods, they shall be restored to him in places Guildable, by the King's Officers and fix Men of the Country; and in other places by the Lords there and their Officers, and fix Men of the Country.

This Law hath a very near relation to that of the Romans, called De Usu-Captione, or the Atinian Law; for Atinius Enacted, That the Plea of Prescription or long possession, should not avail in things that had been stoln, but the interest which the right Owners had should remain perpetual; the words of the Law are these, Quod re Rom. L. I. C. II. Surreptum est, ejus rei aterna auctoritas effet, where by An-

Sigonius de 74-

Ctoritas is meant Jus Dominis. XXIII. Yet by the Common Law of England, it has been held. That if a man commit Piracy upon the Subjects of another Prince or Republick (though in League with us) and brings the Goods into England, and fells them in a Market Overt, the same shall bind, and the Owners are for ever concluded, and if they should go about in the Admirally to question the property, in order to restitution, XXIV. This they will be prohibited.

Mich. 13 Fac. in B. R. Sir Richard Bingly's Case, Roll's Abridgment, fol. 5300

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XXIV. This offence was not punishable by the Common Law, as appears by the preamble of the Stat. of 28 H. 8. cap, 15. but the fame was determined and judged by the Admiral, after the course of the Civil Law; but by force of the faid Att, the same is inquired of, heard, and determined according to the course of the Common Law, as if the offence had been committed on Land.

XXV. This Act does not alter the offence, or make the offence Felony, but leaves the offence as it was before this Act, viz. Felony only by the Civil Law, but giveth a mean Coke a inflit. of Tryal by the Common Law, and inflicteth pains of death, tit. Admir. as if they had been attainted of any Felony done upon the The Indictment must mention the same to be done upon the Sea.

XXVI. A Pardon of all Felonies does not extend to this Moore 756. offence, but the same ought especially to be named; and Butisthe party though there be a Forfeiture of Lands and Goods, yet be attainted before the Adthere is no corruption of Blood, nor can there be an Acmiral, and not ceffory of this offence, tryed by virtue of this Statute; before the but if there be an Accellory upon the Sea to a Piracy, he Commission must be tryed by the Civil Law.

The Statute of 35 H. 8. cap. 2. taketh not away this is no corrupti-Statute for Treasons done upon the Sea, nor is Clergy allow-forseiture of able to the party on the Statute 28 H. 8. vide 14 Fac. in Lands; quod B. R. Moore 756. plac. 1044.

XXVII. Though a Port be Locus publicus uti pars Oceani, 389. vid. postea yet it hath been refolved more than once, that all Ports, not only the Town, but the Water is infra corpus Comi-

tatus. If a Pirate enters into a Port or Haven of this Kingdom, and a Merchant being at Anchor there, the Pirate affaults Hyde and ohim and robs him, this is not Piracy, because the same is the Ship of Canot done super altum Mare; but this is a down-right rob- prain slue of bery at the Common Law, for that the Act is infra corpus the Merchan-Comitatus, and was inquirable and punishable by the Com dize of one mon Law, before the Statute of 28 H. 6. cap. 15.

Merchant in London; and they were indicted for it at the Common Law, and were found guilty of the same, Anno 23 Car. 2. at the Old Baily.

XXVIII. So if fuch a Piracy be made in a Creek or Port, in such cases it has been conceived, that Clergy is allow- Sir Fran. Moore able upon the Statute of 28 H. 8. but if it be done Super 756. I fac. altum Par. 1044.

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And the same altum Mare, there no Clergy is allowable: by the Pardon of was so ruled by all Felonies, at the Common Law, or by the Statute-Law, the opinion of Felony super altum Mare is not pardonable; for though the Sir Lyonel fen-kins, and the King may pardon this offence, yet being no Felony in the eye of the Law of this Realm, but only by the Civil Law, reft of the the Pardon of all Felonies generally extends not to it; Lords the Judges, upon for this is a special offence, and ought especially to be the Piracy mentioned. committed by

Cufack and others; and he was afterwards executed Anno 1674. vide 19 E. 3. Cor. 124. 9 H. 4. 2.

9 E. 4. 28. Cimitit. fol. 112.

XXIX. A man attainted by virtue of that Statute; forted in cokes 3. feits his Lands and Goods, yet there works no corruption of Blood, by virtue of that attainder; nor can there be any Accessory of Piracy by the Law of this Realm: but if it falls out that there is an Accessory upon the Sea, such Accessory may be punished by the Civil Law, before the Lord Admiral, but he cannot be punished by virtue of this Act, because it extends not to Accessories, nor makes the offence Felony.

28 Eliz. Butlers Case cited 3. Instit. fol. 113.

XXX. If one steals Goods in one County, and brings them into another, the party may be indicted in either County; but if one commits Piracy at Sea, and brings the Goods into a County in England, yet he cannot be indicted upon the Statute, for that the original taking was not Felony, whereof the Common Law took conuzance.

Marsh's Case

XXXI. If a man is taken on fuspicion of Piracy, and a Bill is preferred against him, and the Jury find Ignor amus; 13 Jac. in B.R. if the Court of Admiralty will not discharge him, the 3 Bulfred f. 27. Court of Kings Bench will grant a Habeas Corpus, and if there be good cause, discharge him, or at least take Bail for him: But if the Court suspects that the party is guilty, perhaps they may remand him; and therefore in all cases, where the Admiralty legally have an original or a concurrent Jurisdiction, the Courts above will be well informed before they will meddle.

> If a man be in custody for Piracy, if any aids or assists him in his escape, though that matter is an offence at Land, yet the Admiralty having Jurisdiction to punish the principal, may have likewise power to punish such an offender, who is lookt upon quasi an Accessory to the Piracy; but to rescue a Prisoner from an Officer of theirs, they

Telverton 134; 135. Scadings Cafe, Tench verfus Harrifon B.R. Stiles 1714 340.

they may examine the cause, but they cannot proceed eriminally against the offender.

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XXXII. Anciently when any Merchants were robbed so Eliz. 2. parat Sea. or spoiled of their Goods, the King usually issued 2. Dorf. 24. de out Commissions under the Great Seal of England, to inquire audiend. & of fuch depredations and robberies, and to punish the pair terminand. ties; and for frauds in Contracts, to give damages to the futer mare departies, and proceed therein secundum Legem & consuetu- predatis. dinem Anglia, secundum Legem Mercatoriam, & Legem Ma. Pat. 6 E.i. M. 24. Dorf. the ritimam: all three Laws included in the Commissions.

Case of Will. de Dunftaple a Citizen of Winton. Pat. 32 E. I. m. 4. Dorf. pro willielmo Perin & Domengo Perez Mercatoribus.

XXXIII. The Courts of Westminster have a Soveraign Pasch. 13 7ac. power to inquire after the liberty of every man, and that in B. R. King he should not be deprived of the same without just cause; Enlsted. 3. parts. and therefore as in other Capital causes, so likewise in fol. 27. this they may fend their Habeas Corpus to remove the Body of any committed upon fuch an account, and if they fee a just cause, they may either Bail, discharge, or remand, as the matter shall feem just before them.

And although the Statute of 28 H.S. c. 15. does not alter the offence, or make the offence Felony, but leaveth the offence as it was before that Statute, (viz.) Felony only by, Cole 3. Inflits the Civil Law, and gives a mean of Tryal by the Common fol. 112. Law, and inflicteth fuch pains of death as if they had been attainted of any Felony; yet it was refolved * by all the * self. Admir. Judges, and the rest of the Commissioners then present, Feb. 18. 16804 that His Majesty having granted Letters of Reprilal to Sir Case of compens Edmond Turnor and George Carew against the Subjects of Gwyther & als the States General of the United Provinces, and that afterwards that Grant was called in by Proclamation, then mortified in the Treaty of Breda, and afterwards superfeded under the Great Seal: That Carew (without Turnor) having deputed feveral to put in Execution the faid Commission, who accordingly did; and being indicted for Piracy, the fame was not a Felonious and a Piratical Spoliation in them, but a Caption in order to an Adjudication; and though the Authority was deficient, yet not being done by the Captain and his Mariners, animo depradendis they were acquitted.

CHAP.

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CHAP. V.

The Right of the Flag, as to the acknowledging the Dominion of the British Seas.

I. Considerations general as in reference to the same.

II. Whether Princes may have an exclusive property in the Sea.

III. That such an exclusive Dominion may be, and proved.

 IV. Of the Sea, whether capable of Division as the Land.
 V. Considerations general as in refe-

V. Considerations general as in reference to Maritime Cities touching Sea-Dominion.

VI. Of the Sea, by reason of its instability, whether capable of subiestion.

VII. Of the Dominion of the British
Sea afferted long before, and ever
fince the Conquest of this Isle by the
Romans.

VIII. The duty of the Flag, but a confecutive acknowledgment of that Right, and of the Ordinance

of Hastings declaring that Cuftomary obeisance.

IX. Considerations had on some Treaties, in reference to the asserting the duty of the Flag.

X. Of the extent how far that duty is required and payable.

XI. Of the duty of the Flag, not a bare Honourary salute, but a Right.

XII. Of the importance and value of the same as well in Nations Fareign, as in England.

XIII. Of the effects of such a Right and Soveraignty. Of the extent of this Dominion by the Laws of England.

XIV. Of the duty of the Flag not regarded as Civility, but commanded as a duty.

XV. Of the importance of that ac-

I. A Fter the Writings of the Illustrious Selden, certainly it's impossible to find any Prince or Republick, or fingle Person indued with reason or sense, that doubts the Dominion of the British Sea to be entirely subject to that Imperial Diadem, or the duty or right of the Flag, which indeed is but a consecutive acknowledgment of that ancient Superiority: yet there have not been wanting some, who though they have not questioned the former, have highly disputed the latter.

But there are some satal periods amongst our Northern Regions, when the Inhabitants do become so brutal and prejudicate, that no obligation of Reason, Prudence, Conscience, or Religion can prevail over their passions, especially if they become the devoted Mercenaries of an implacable Faction*, in opposition to all that can be cal-

led either just or honourable; we need not rip up the carriage of that late infolent Son of a Tallow Chandler, whose deportments made him no less insupportable at home, than he was amongst Foreign Princes; the testimonies of his greatest parts and abilities being no other than Monuments of his malice and hatred to this Nation, and Records of his own folly. But Princes are not to be wrangled out of their ancient Rights and Regalities by the fubtil Arguments of Wit and Sophiftry; nor are they to be Supplanted or overthrown by malice or Arms, so long as God and good men will affift, in which His Sacred Majesty did not want, when he afferted his Right with the Blood and lives of fo many thousands that fell in the dispute.

II. That Princes may have an exclusive property in the Soveraignty of the several parts of the Sea, and in the passage, Fishing and shores, is so evidently true by way of fact, as no man that is not desperately impudent can deny it: the confiderations of the general practice in all Maritime Countries, the necessity of Order in mutual Commerce, and the Safety of mens persons, Goods and lives, hath taught even the most Barbarous Nations to know by the Light of Humane reason, that Laws are as equally necessary for the Government and preservation of the Sea, as those that negotiate and trade on the firm Land; and that to make Laws and to give them the Life of Execution, must of necessity require a Supreme Authority; for to leave every part of the Sea and shores to an Arbitrary and promiscuous use, without a correcting and fecuring power in case of wrong or danger, is to make men in the like condition with the Fishes, where the greater devour and swallow the less.

III. And though the Sea is as the High-way, and common to all; yet it is as other High ways by Land or great Rivers are, which though Common and Free, are not to be usurped by private persons to their own entire service, but remain Seethat Pleast to the use of every one: not that their Freedom is such, as chizgola for that they should be without protection or Government of some the Venetian Prince or Republick, but rather not exclude the same; for Soveraignty of the Adriatick the true Enlign of liberty and freedom is protection from Sea, at the end those that maintain it in liberty.

IV. And as the Sea is capable of protection and Government, fo is the same no less than the Land subject to be divided amongst men, and appropriated to Cities and

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Potentates, which long fince was ordained of God as a thing most natural: whence it was that Aristotle said, That unto Maritime Cities the Sea is the Territory, because from thence they take their sustenance and defence; a thing which cannot be, unless part of it might be appropriated in the like manner as the Land is, which is divided betwixt Cities and Governments, not by equal parts, or according to their greatness, but according as they are able to rule, govern, and defend them: Berne is not the greatest City of Switzerland; yet she hathas large a Territory as all the rest of the twelve Cantons put together: The Cities of Noremberg and Genoa are very rich and great, yet their Territories hardly exceed their Walls: and Venice the Mistress and Queen of the Mediterranean, was known for many years to be without any manner of possession on the firm Land.

V. Again on the Sea, certain Cities of great force have possessed large quantities thereof; others of little force

of what was alledged by the have been contented with the next Waters.

Neither are there wanting examples of fuch, as not-Towns, at the withstanding they are Maritime, yet having fertile Lands Venetians affer- lying on the back of them, have been contented therewith ting of the Sowithout ever attempting to gain any Sea- Dominion; others who being awed by their more mighty Neighbours, have been constrained to forbear any such attempt; for which munes, uti ipse two causes a City or Republick, though it be Maritime, yet it may remain without any possession of the Sea. God hath instituted Principalities for the maintenance of Justice to the benefit of Mankind; which is necessary to be executed as well by Sea as by Land: S. Paul faith, that for this cause there were due to Princes Customs and Contri-

bentem competit butions. actio injuriarum, l. 10. si quis in mare, 'l. injuriarum, sect. ult. de injuriid. Sin littora' quoque communia funt, l. 2. re divif. Quia accefforium funt maris, & accefforium fequitur naturam Principalis, l. 2. de peculio. legat. c. accessorium de reg. jur. in 6. Ad littus maris igitur accedere quivis potest, non piscandi tantum gratia, sed etiam ædificandi & occupandi caufa, l. quod in litt. de acquir. rer. Dom. l. in litt. ff. nequid in loc. pub. Fo. Angelius I.C. de repub. Hansiat. par. 6. fol. 8 s. Edit. Francos. An. Dom. 1641. But these arguments were easily answered by the Venetian Lawyers; Quemadmodum communio littorum restringitur ad populum, à quo occupata funt, lib. 3. fect. littora. D. de. quid in loc. pub. Ita etiam communio maris: adeo ut per mare à nemine occupatum navigatio sit omnino libera: per mare autem occupatum ab aliquo Principe ii liberam habeant navigationem qui sunt illi Principi subjecti; alii verò entenus, quatenus idem Princeps permettit. Julius Pacius de Dom. maris Adriaticis

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It would be a great abfurdity to praise the well Government and defence of the Land, and to condemn that of the Sea; nor doth it follow, because of the vastness of the Sea, that it is not possible to be governed and protected: but that proceeds from a defect in Mankind; for Defarts, though part of Kingdoms, are impossible to be governed and protected, witness the many Defarts of Africk, and the immense valities of the New World.

VI. As it is a gift of God, that a Land by the Laws and publick Power be ruled, protected, and governed: fo the fame happens to the Sea; and those * are deceived by a * Grotius mare gross equivocation, who aver that the Land by reason of liberum. Comits stability ought to be subjected, but not the Sea, for munio paritaisbeing an unconstant Element, no more than Air; foraf- communitier pofmuch as they intend by the Sea and the Air all the parts sidetur, vitionaof the fluid Elements, it is a most certain thing, that they turali negligicannot be brought under subjection and Government, be- tur : Habet comcause whilst a man serves himself with any one part of munio rerum gethem, the other escapes out of his power; but this chan-cultatem, Leg. ceth also to Rivers, which cannot be detained : but when pater. §. dulcifone is faid to rule over a Sea or River, it is understood not sime. Leg. 2. of the Element, but of the Site where they are placed: the Water of the Adriatick and British Seas continually runs out thereof, and yet is the same Sea, as the Tyber, Poe, Rhyne, Thames, or Savern are the same Rivers they were a thousand years since; and this is that that is subject to Princes by way of Protection and Government.

Again, it would feem ridiculous if any man would affert that the Sea ought to be left without Protection, fo that any one might do therein well or ill, robbing, spoiling, and making it unnavigable, or whatfoever should feem fitting in their eyes; from all which it is apparent that the Sea ought to be governed by those to whom it most pro-

perly appertains by the Divine disposition.

VII. When * Julius Cafar first undertook the Invasion * Que omnia of this Isle, he summoned the Neighbouring Galls to in- fere Gallis erans form him of the Shores, Ports, Havens, and other things incognita greate convenient that might accelerate his intended Conquest, enimtemereprabut from them nothing could be had, they answering, All ter mercatores commerce and traffick, and visiting their Ports was inter- adit ad illos

eis ipsis quidquam præter oram maritimam atque eas Regiones que sunt contra Galliam novem eft. Com. Gall. Bell. lib. 4. fol. 72. m. 8.

ditted

* Galls Town near Yarmouth conceived, one of the common places of Mart for the Galls.

Aibus no Aris inde lub ministrata auxilia intelligebat.

dicted to all Nations before licence had; nor could any but Merchants visit the same, and then had they places * beingthen, as is affigned them whither they should come; nor was this Dominion that the Britains then used, commanded without a Naval Force; the fight of which when Cafar faw, he or Commerce preferred them before those of the Romans: for upon that occasion it was that Casar, having seen those Auxiliary Quod omnibus Squadrons, which the Britains fent the Gauls in their Expefere Gallinis ho- ditions against the Romans, took occasion to find out that warlike people, whose bare auxiliary aid shook the Flower of the Roman Squadrons.

> And when the Romans became Conquerours of this Ifle, the same Right or Dominion was during all their time, supported and maintained when they failed round their new atchieved Conquests in the time of Domitian, Agricola,

giving terrour to all the neighbouring Nations.

But when that Mighty Empire became subject to Fate, and this Nation by the continual supply of Men, which went out of the Kingdom to fill up the contingencies of the Roman Legions, became at last so enseebled as to render us a prey to the Saxons; which Empire having fetled peace with their Danish Neighbours, and quieted their own home-bred quarrels; and having reduced the feveral petty Kingdoms of their Heptarchy under one Diadem, they forgot not to assume their ancient Right and Dominion of the

Seas; as did the most Noble Edgar +, who kept no less a number than 400 Sail of Ships to vindicate and afcertain his elementa, qui est Dominion, giving protection to the peaceable, and punishment to the offenders: nor did his Successors Etheldred, Anglorum Bafi- Canutus, Edmund, and others that followed of the Danish leus, omnium- Race, any ways wave, relinquish or lose that Royalty, but que rerum, In- obsequiously maintained the same down to the Conquerour, Sularum Oceani and from him since for some upwards of 1200 years in a quaBritanniam quiet and peaceable possession. circumjacent,

cunctarumque Nationum que infra eam includuntur, Imperator & Dominus. Ex Chart.fundam. Eccles. Wigor. Sir John Burroughs fol. 21. 4 Idem quoque Edgarus 400. Naves congregavit, ex quibus omni anno post Festum Paschale 100. Naves ad quamlibet Anglia partem Batuit; sic astate Insulam circumnavigavit; hyeme vero judicia in Provincia exercuit. Ex Ranulph. Ceftrenf. fol. 22. 7. B.

> To mention the Ancient Commissions, and exercise of this Soveraign power, Safe-conducts, Writs of Seizure, Arrests, Records of Grants, and Licences to pass through the see former by the in Sea,

Tacit. in vita Agricol.

† Altitonantis Dei largi-flua Rex Regum; Ego Edgarus

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Sea, and to fish, Parliament Rolls and the like, would & So fully promake a Volume; in a word, if Right of Prescription, Succes- ved by Mr. Selsion of Inheritance, continual Claim, matter of Fact, consent den, that it of History and Confessions, even from the mouths and pens would be impertinent in of Adversaries, be of any moment to the afferting of a Ti-this Tract to tle, his Sacred Majesty may be prefumed to have as good a rehearse the Title to that, as the most absolute Monarch this day on authorities he Earth, hath to whatever he can claim or does enjoy.

vouches. Vide Fac. UF

fer. Armach. Epifc. Hibernia Sylloge p. 121, 162.

VIII. Now the duty of the Flag is no more but a confecutive acknowledging that the Right and Dominion of the British Seas, (not as a bare Honorary Salute or Ceremony, but as an absolute sign of the Right and Soveraignty of those Seas where they are obliged to strike Sail) are in him to whose Flag they vail, and pay that duty to; and in substance is no more but that the King grants a general Licence for Ships to pass through his Seas, that are his Friends, paying that obeifance and duty, like those fervices when Lords grant out Estates, referving a Rose or Pepper Corn, the value of which is not regarded, but the remembrance and acknowledging their Benefactors Right and Dominion.

That this hath been an Ancient Custom, always waiting on that Soveraignty, appears by that memorable Record upwards of 400 years fince made, where it is declared by King John what the Ancient Custom was, in thefe words; That if a Lieutenant in any Morage, be. Inter Leges Mae ing ordained by Common Council of the Kingdom, do en rinas sub fine counter upon the Sea any Ships of Weffels, laden of anni regni Reumladen, that will not firthe and bail their Bonets at the gis Johannis Commandment of the Lieutenant of the Bing, but will fecundi, entitled, Le Ordifight against them of the fleet, that if they can be taken, nance al Hathey be reputed as Guemies, and their Ships, Meffels, flings. and Gods taken and forfeited as the Gods of Enemier, although the Matters of Polleffors of the same would come afterwards, and alledge, that they are the Ships, Mesfels, and Gods of those that are Friends to our Loid the Bing, and that the Common People in the same be chastised by imprisonment of their Bodies sor their Rebellion, by discretion.

Thus this Immemorial Custom was by that prudent Prince affirmed, the which hath been always before, and ever fince (without interruption by all Nations) constantly paid to the Ships of War, bearing the Royal Standard, and other of His Majesties Ships, wearing his Colours and Ensigns of Service; he knowing that undoubted Maxime of State,

austit. Or jur. 1.2.c.2. dub.19.

Leon. Lessus de That Kingdoms are preserved by reputation, which is as well their strongest support in Peace, as their chiefest safety in time of War; when once they grow despised, they are either subject to Foreign invasions, or Domestick troubles, the which (if possible) that Prince would have prevented, but he lived when those Celestial Bodies, which govern the actions of Princes, seemed to frown on the most Virtuous and Wife.

IX. And as there is no Nation in the World more tender and jealous of their honour than the English; fo none more impatiently tolerate the diminution thereof. Hence it was that in all Treaties, before any thing was afcertained, the Dominion of the Seas, and striking the Top-sail was

always first provided for.

In the Year 1653, after the Dutch had measured the length of their Swords with those of this Nation, and being sensible of the odds, had by their four Ambassadours most humbly befought Peace, this very Duty of the Flag was demanded by the 15th Article, in these

words:

Note, That Cromwell was ny fuch Article into any Treaty: our having never been disputed

That the Ships and Wessels of the said United P20. binces, as well Hen of War as others, be they in fingle the first that e- Ships, or in Flets, meeting at Sea with any of the Ships ver interred a- of this State of England, og in their ferbice, and wearing the Flag; shall firike the Flag, and lower their Topfail, until they be passed by; and shall likewise submit Right and Do. themselbes to be biffted if thereto required, and perform minion over all other respects due to the said Commonwealth of Engthe British Sea land, to tobom the Dominion and Soberaignty of the British Seas belong.

before, but by an immemorial prescription and possession transmitted to us, and suppofed as unquestionable by all Princes. Novem. 15. 1653.

> This was so peremptorily demanded, that without the solemn acknowledgment of the Soveraignty over the British Seas, there was no Peace to be had; that as to the acknowledging of the Soveraignty and the Flag, they were willing

to continue the Ancient Custom, but that of Visiting was somewhat hard: 'tis true the latter Clause was by the Ulurper waved, for reasons standing with his private in- Leo ab Atama terest; but the first was (with the addition of these words, fol. 847. -in fuch manner as the same bath been formerly obferbed in any times whatfoeber) made absolute by the 13th Article between Him and that Republick, in these words: Item quod Naves & Navigia dictarum Fæderatarum Provinciarum, tam bellica & ad Hostium vim propulsandam instructa, quam alia, que alicui è Navibus bellicis bujus Reipublica in maribus Britannicis obviam dederint, vexillum suum è mali vertice detrahent, & supremum velum demittent, eo modo, quo ullis retrò temporibus, sub quocunque anteriori regimine, unquam observatum suit, and from thence it was transcribed into the 10th Article at Whitehall, and after. Sept. 14. 1662. wards into the 19th Article at Breda, and from thence into the 6th Article made last at Westminster, and that Clause of fearthing of each others Ships made reciprocate, by the 5th Article made in the Marine Treaty at London; but Dec. 18. 1674. that extends not to Ships of War, but only the Ships of S. 17 Subjects.

X. By the British Seas in the Article about the Flag, are meant the four Seas, and not the Chanel only; for in the 16th Article they did express what was meant by the Bri-

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That the Inhabitants and Subjects of the United dominion is Probinces map with their Ships and Westels surnished ascertained as Merchant Men, freily use their Pabigation, fail, pals from Cape Fiand repais in the Seas of Great Britain and Ireland, and nifterre to the the Mes within the fame, commonly called the British of the Land Seas, without any wrong of injury to be offered them by Van Staten in the Ships of People of this Commonwealth; but on the Norway, Feb.9. contrary shall be treated with all lobe and friendly offices, 167? and may likewife with their Men of War- not er ceding fuch a number as shall be agreed upon-fail, Artic. 16. in pals and repals through the faid Seas, to and from the Nov. 15. 1653. Countries and Ports beyond them; but in case the said States General thall have occasion to pass through the said Seas with a greater number of Wen of War, they shall give the Ponths notice of their intention to the Commonwealth, and obtain their confent for the passing of fuch a Fleet, for prebenting of jealouste and mishinderplanding betwirt the States by means thereof.

* But now by the last Treaty at Wellm. the

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and Sir Fohn Constables Cafe. Leonard 3. part 72.

Selden de Dom. Maris 1.2. 6.14. 27, 28.

Rolls Abridge 2. part. 174.

Coke 4. Inflit, fol. 142.

The first part of this Article doth plainly fet out the extent of the British Seas, and that it is not the bare Chanel alone that comprehends the fame, but the four Seas: and the same is further explained in the Great Case of # Hill. 29 Eliz. Constables, * where the Dominion of the Queen (before the B.R. the Queen union) as to the Seas, did extend mid-way between England and Spain, but entirely between England and France; the French never had any right or claim to the British Seas: for in the Wars between Edward the First and Philip the Fair, (all Commerce on both fides being agreed to be free, so that to all Merchants whatsoever there should be inducia, which were called sufferantia Guerra, and Judges on both fides were appointed to take cognizance of all things done against these Truces, and should exercise Judicium secundum Legem Mercatoriam & formam sufferantia) it was contained in the first provision of that League, that they should defend each others Rights against all others; this afterwards occasioned the introducing that Judgment in the fame Kings time, (before those Judges, chosen by both the faid Princes by the Proctors of the Prelates, Nobility, and High Admiral of England, and all the Cities, Towns, and Subjects of England, &c. unto which were joyned the fuffrages of the most Maritime Nations, as Genoa, Catalonia, Spain, Almain, Zeland, Holland, Friesland, Denmark, and Norway, and divers other Subjects of the Roman Empire) against Reginer Grimbald, then Admiral of France, for that there being Wars between Philip King of France and Guy Earl of Flanders, he had taken Merchants upon those Seas, in their Voyage to Flanders, and despoiled them of their Goods; whereas the Kings of England and their Predeceffors (as they all joyntly do declare and affirm) without all controversie beyond the memory of man have had the Supreme Government of the English Seas, and the Islands thereof.

> Prescribendo scilicet Leges, Statuta atq, interdicta armorum, navissmque al. ac Mercatoriis armamentis instructarum, causationes exigendo, tutelam prabendo, ubicunque opus effet, atque alia constituendo quacunque fuerint necessaria ad pacem, jus & aquitatem conservandam inter omnimodas rates tam externas quam in Imperio Anglicano comprehensas qua per illud transierint; supremam issdem item suisse at que esse tute-

An universal consent of all Nations.

lam; merum mixtum Imperium in juredicendo secundum dictas Leges, Statuta, prascripta & interdicta, alisque in rebus qua ad summum Imperium attinent in locis adjudicatis.

Which memorable Record apparently shews, that the Kings of England have had iftud regimen & dominium 4. 143.142. exclusive of the King of France bordering upon the same Selden cap. 27. Seas, and of all other Kings and Princes whatfoever: and Mare claufum. it was there adjudged that Grimbalds Patent was an usurpation on the King of England's Dominion, and he ad- Sir John Burjudged to make farisfaction, or if he proved unable, then roughs fol. 42. the King his Master should, and that after satisfaction he

be rendred to punishment.

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And as to the fecond part of the Articles of giving notice, it was but an Act of Common prudence; their late unexpected visit, which they then gave, put the English to some surprise; but they facing the Batavian, soon made them know that they were as capable of beating them home, as they were then daring in coming out, and were not to be braved out of a Dominion and Right, which their Ancestors had with so much glory acquired and afferted.

XI. By the Article of the Offensive and Defensive Anno 1635. League between France and the United Provinces, it was agreed, That if at any time the Dutch Fleet (which Leo ab Aitzma were to scour the French Coast's in the Mediterranean from Belg. pag. 177. Pirates) should at any time meet the French, the Admiral Edit. Lugduni of the Dutch was to strike his Flag and lower his Top-sail at Batavor. quarto his first approach to the French Fleet, and to salute the 1654. Admiral of France with Guns, who was to return the faid falute by Guns also, as was usual when the Dutch and English Fleet did meet.

Only in this the right of the Flag of England differs from that claimed by the French; for if there had been a failure on the part of the Dutch, of paying that respect to the French, the same would have amounted to no more but a breach of the League: but the not striking to the King of England's Flag, is open Rebellion; and the Article does fo fignifie, for it is there mentioned as a Right and Soveraignty, not a bare Dominion only, like that of Jerusalem to the King of Spain. 'Tis very true, the refusing of it is an absolute annulling of the Treaty; for though in the League with England it is mentioned, yet there is nothing of any concellion

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cession granted by the same, but only recognized there as a Fundamental of the Crown and Dignity of the Kings of England; nor was the same ever so much as mentioned in any former Treaty before O. P's. time, as we have already mentioned, but it was always a Clause in the Instructions of the Admiral and the Commanders under him, That in case they met with any Ships whatsoever on the British Seas that refused to strike Sail at the Command of the Kings Admiral or his Lieutenants, that then they should repute them as Enemies (without expecting any declared War) and destroy them and their Ships, or otherwise seize and consistent their Ships and Goods; and these Instructions amongst others continue to this day. The like are given by the Venetians to their Captains in reference

to the Adriatick Sea, and by feveral other Princes. XII. The Duty of the Flag that hath been so constantly paid to our Ancestors, is of such advantage to the continuing the renown of this Nation, that it serveth to imprint new reverence in Foreigners that render it, and adds new courage to those of our Seamen that exact it: and fince we know how much it imports a State that it be reverenced abroad, and that Repute is the principal fupport of any Government, it equally influenceth the Subjects at Home and Foreign Allies abroad. And as there is no Nation in the World more tender of their Honour than the English, so none more impatiently tolerate the diminution thereof. With what refentments would not only the more Generous and Noble, but even the Popular and vulgar Seamen detest this or any succeeding Age, should they remit or lose that Regality, those acknowledgments which their Predecessors with so much Glory asserted, and the neglect whereof was always punished as open Rebellion? the indignity of fuch an Action being fufficient to inflame the whole Kingdom. The confideration of which, besides his Sacred Majesties own Royal inclination to the same, and his evident testimonies never to abandon a Ceremony of so high a concerment; witness the exposing the one half of his own heart his Royal Highnes, in the afferting the same, with such Fleets and in such Battels, that no Age or time can shew a Memorial of the like, are causes fusficient to create in us new flames of love to those Royal Patriots and Defenders of our Rights. Private Persons move

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move in another Sphere, and act by other Rules than It is no policy Soveraign Powers; the regard of credit with them may to attempt the oftentimes yield to those of utility or other motives; the Customs and Publick receives little injury thereby, nor is their wildom usages, even erquestioned for such punctilio's, if they relinquish them for rors and abuses other Emoluments or Peace fake; but Soveraigns cannot are upon such fo transact, their Subjects the People participate in their an account le-Honour and Indignities; they have a property, a direct in omnibus re-Right in the former *: Soveraigns cannot alienate or fuffer bus vetustas ipsa their Honours to be impaired, because it is not really plurimum habet theirs, it appertains to the Nation universally, and they dignitatis: ita are all effectually injured by such transactions, either be-ut Massalienses cause the indignity really extends to them, or because the tissima creditur Government and Anthority is thereupon weakned and pre-fuiffe Respublijudiced, which is the greatest of Civil detriments that can ca, laudentur to befal a People, though ordinarily they are not aware nomine quod gladio ad punithereof. endos sontes us

sint eodem à condita Urbe, quo indicarent in minimis quoque rebus antiquæ consuetudinis momenta servanda. Proxime enim ad Deum accedit Antiquitas, æternitatis quadam imagine. Grot. de Antiq. Reipub. Batav. in Præsat. * Vide the Earl of Shastsbury's Speech to the Parliament 1672. Cæteris mortalibus in eo stare consilia, quid sibi conducere putent a Principum diversam esse fortem, quibus præcipua rerum ad summam dirigenda. Tacit. Annallib. 4. Si sama tua videtur necessaria, restam muneris tui administrationem non potest condonne. Lessus de Inst. 12: 6.11. dub. 24. §: 26.

As Prudence doth thus distinguish betwixt the demeanor of Private and Publick persons, so doth Charity it self; for though the Gospel precepts do oblige particular persons to bear injuries and contumelies with patience, and to surrender even the Coat as well as the Cloak; yet is not this so to be construed, as if even private Christians were to yield up their Civil Rights to every insolent one that would incroach upon, and usurp them, or that they were to deprive themselves of those Reparations, which the Law and Government assorbs them; neither is it so to be understood as if the Civil Magistrate in Christendom might not secure himself of that obedience and reverence, which is due unto dignity, but bear the Sword in vain.

XIII. This being the value which this Nation did always: place upon the Right of the Flag, the which they never did regard only as a Civiliry and Respect, but as a principal Lestimony of the unquestionable Right of this Ration to the Pominion and Superiority of the adjacent Seas.

acknow:

lib. I. C.II.

Sir Henry Con-

Rables Cafe,

Coke 5. part fol. 107.

acknowledged generally by all the Neighbour States and Princes of Europe, and must be paid and acknowledged by all Princes in the World, that shall be or pass on the same :

The effects of this Dominion Universal or Soveraignty

which accrue to a Prince are thefe:

1. Not only the Regality of the fishing for Pearl, Co. Forn. Palating ral, Amber, &c. but likewise the advantage of all Fish he Dom. Maris Royal, as Whales, Sturgeon, &c. and not only those, but also the direction and disposal of all other Fish accord. ing as they shall feem to deferve the regards of the Publick.

as in Spain, Portugal, &c. is used. 2. The prescribing of Laws and Rules for Navigation, not only to his own Subjects, but unto other Strangers, whether they be Princes of equal strength and dignity

Belli 1. 2. 6. 3. 5. 15.

with himself or any way inferior. Thus the Romans did confine the Carthaginians to equip out no Fleets, and forbade Antiochus to build any more than twelve Ships of War: and if Tradition informs me right, Queen Elizabeth Grotius de Ime interdicted the then French King to build any other or more Ships of War than what they then had, without her leave first obtained. The Athenians prohibited all Median Ships of War to come within their Seas, and prescribed to the Lacedemonians with what manner of Vessels they should fail. All Histories are full of such Presidents, which Princes have Enacted either upon Agreements enforced upon the Conquered, or Capitulations betwixt them and others their equals or inferiors for mutual conveniences.

Foan. Palatius moi fuera. Fulius Paucius Adriatici.

Coke s. part,

fol. 63. Cafe

Chamberlain of London.

13 H. 4. fol. 14.

3. The power of impoling Cultoms, Gabels, and Taxes upon those that navigate in their Seas, or otherwise fish therein, which they do upon feveral rightful claims, as de Dom. Maris protecting them from Pirates, and all other Acts of Hostilities, or assisting them with Lights and Sea-marks, for which advantages common Equity obligeth those that reap benefit thereby, to repay it with some acknowledgment, which ought to be proportioned according to the favour received, and the expence which the Prince is at to continue it unto them.

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4. As it is incumbent on a Prince duly to execute Justice in his Kingdoms by Land, so the Sea being his Territory, it is requisite and a necessary effect of his Dominion, that he cause Justice to be administred in case of Maritime 5. That

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cute Juis Terriminion, faritime 5. That fhall falute his floating Castles, the Ships of War, by lowring the Top-fail, striking the Flag (those are the most usual courses) in like manner as they do his Forts upon Land; by which fort of submissions they are put in remembrance, that they are come into a Territory wherein they are to owne a Soveraign power and Jurisdiction, and receive Protection from it.

These are the proper effects of a real and absolute Soversignty over the Seas, which how they are possessed by

the Venetians, this enfuing account will declare.

The Gulph of Venice is nothing else but a large Bay or Inlet of the Sea, which entring in betwixt two Lands, and severing them for many miles continuance, in the end receives a stop or interruption of further passage by an opposite shore, which joyns both the opposite shores together: It is called the Gulph of Venice, from the City of Venice, situate upon certain broken Islands near unto the bottom thereof: it is also called the Adriatick Sea, from the Ancient City Adria, not lying far distant from the former; from the entrance thereof unto the bottom it contains about fix hundred Italian miles, where it is broadelt it is an hundred and fixty miles over, in others but eighty, and in most an hundred. The South-West shore is bounded with the Provinces of Puglia and Abruzzo in the Kingdom of Naples; the Marquisate of Ancona and Romagnia in the Popes State; and the Marquilate of Trevisana in the Venetian State: The North part of it, or bottom, hath Friuli for its bounds; the North-East is limited by Istria, Dalmatia, Albania, and Epirue: whereof Istria doth not so entirely belong to the Venetians, but that the Emperor as Arch-Duke of Gratz, doth possess divers Maritime Towns therein; in Dalmatia, faving Zara, Spalato, and Cararo, they have nothing of importance, the rest belonging to Ragusa and the Turks: in Albania and Epirus they polless nothing at all, it being entirely the Turks; so that he who shall examine the circuit of the Sea, which must contain about twelve hundred miles, shall find the shores of the Venetian Signory not to take up two hundred of them, omitting some scattered Towns and dispersed Islands lying on the Turkish side of the Adriation shore,

For

rates, and the prefences of divers potent Princes, as the Pore, Emperour, King of Spain, and the Great Turk, who each of them have large Territorries lying thereupon; also to cause all Ships which navigate the same to go to Venice, and there to pay Custom and other Duties. the Republick maintains continually in action a great number of Ships, Gallies, and Galliots; whereto also they add more, as there may be occasion, whereof some lye about the bottom of the Gulph in Istria, others about the Islands of Dalmatia to clear those parts of Pirates, who have much infested those Seas; and others and those of most force have their station in the Island of Corfu and Standia; in the first of which commonly resides the Captain of the Gulph, whose office is to secure the Navigation of the Gulph, not only from the Corfaires, but to provide that neither the Gallies or Ships of the Pope or King of Spain, nor Great Turk do so much as enter the same, without permission of the Signory, and upon such conditions as best please them, which they are so careful to effect, that in the Year 1638. the Turkish Fleet entring the Gulph without licence, was affailed by the Venetian General, who funk divers of their Vessels, and compelling the rest to fly into Valona, he held them there belieged, although the same City and Port whereon it stands, be under the Turifdiction of the Grand Signior; and notwithstanding that a great and dangerous War was likely to ensue thereupon betwixt the Grand Signior and the Republick, because the Venetian General being not content to have chased them into their own Ports, did moreover than that fink their Vessels, and landing his Men, slew divers of their Mariners, who had escaped his fury at Sea; yet after that a very honourable Peace was concluded again betwixt them, wherein amongst other things it was a-. greed, That it should be lawful for the Venetians, as often as any Tarkish Vessels did without their licence enter the Gulph, to feize upon them by force, if they would not otherwise obey, and that it should likewise be lawful for them fo to do within any Haven, or under any Fort of the Grand Signiors bordering on any part of the Venetian. Gulph : So jealous hath this Republick been in all times' to permit any to fail the Gulph, that in the Year 1630, (83

Paptista Nani his History of Venice, lib. 11. fel. 446, 447, 448. of Pi-

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(as Palatius relates) that Mary, Sifter to the King of De Domin. Ma-Spain, being espoused to the Emperours Son Ferdinand vis, 1.2. c. 6. King of Hungary, the Spaniards defigned to transport her from Naples in a Fleet of their own, the Venetians suspected that they had an intention hereby to intrench upon. and privily to undermine, by this specious President, that Dominion of the Sea which the Signiory had continued inviolate time out of mind; and that they took this opbortunity when Venice was involved with a War abroad. and infested with the Plague at home, and therefore not in a condition to oppose their progress. The Spanish Ambaffador acquainted the State, that his Masters Fleet was to convey the Queen of Hungary, being his Sister, from Naples to Triefti: The Duke replied, That her Majesty should not pass but in the Gallies of the Republick; the Spaniard replied thereat, pretending that they were infected with the Plague: The Senate being confulted, came to this Resolution, That the Sister of his Catholick Majesty should not be transported to Triesti any other way, than by embarking in the Venetian Gallies, according to the usual manner of the Gulph; and that if the Ambas fadour would acquiesce therein, her Majesty should be attended and used with all that respect and deference which became her Quality: But if the proceeded any other way, the Republick would by force affert her proper Rights, and attaque the Spanish Navy as if they were Enemies, and in Hostile manner invade them. Whereupon the Spaniard was compelled to defire the favour of them to transport the Queen in their Gallies, which Antonio Pifano did perform with much state and ceremony; and the Courtesie was acknowledged by the Courts of the Emperour and King of Spain.

XIV. The Maritime Dominion by the Laws of England Selden Mare were always accounted the Four Seas; fuch as are born class. 1.2. c.24. thereon, are not Aliens, and to be within them is to be Fitzberb. protewithin the Legeance of the King and Realm of England.

The Records in the days of Edward the Third and Henry Coke 4. Inflit. the Fifth proclaim it, that those Kings and their Progent fol. 142. tors had ever been Lords of the Seas: and amongst those many great Instances of proving the Soveraignty of the fame, is that famous Record of Edward the First and Philip the Fair of France, in which were the Procurators of most, Mations

Chion, tit. 46. Seld.ibid. c. 23. Nations bordering upon the Sea throughout Europe, as the Genoeses, Catalonians, Almaines, Zelanders, Hollanders, Freislanders, Danes, and Norwygians, besides others under the Dominion of the Roman German Empire, where all joyntly declare, That the kings of England, by right of the fato Kingdom from time to time, whereof there is no memozial to the contrarp, babe been in peaceable por reffion of the Soberaign Lozofbip of the Seas of England, and of the Ifles within the fame . with power of making and establishing Laws, Statutes, and Probibitions of Arms, and of Ships otherwife firnifed than Werchant Den use to be, and of taking furety, and affozding fafe. quard in all cates where need thall require, and of ordering all things necessary soz the maintaining of Peace, Bight and Couity among all manner of people, as well of other Deminions, as their ofon passing through the said

Seas, and the Soberaign Quard thereof.

By which it plainly appears, That the Kings of Eng. land had then been in peaceable possession of the said Dominion by immemorial Prescription, that the Soveraignty belongeth unto them, not because they were Domini utriufque ripa, when they had both England and Normandy, and were Lords of both shores; (for Edward the First at that time had not Normandy) but that it is inseparably appendant and annexed to the Kingdom of England, our Kings being Superiour Lords of the faid Seas, by reason (as the very Record mentions) of the said flables, Leonard Kingdom: and fince that the Soveraignty of the Sea did always appertain unto the English King, not in any other Right than that of the Kingdom of England; no Prince or Republick ought or can doubt the Title by which our present Claim is deduced; 'tis in right of Britannia, that the same is challenged, 'twas in that right the Romans held it: the Claim justified Edward the Third and his Rose

Noble, though there are other reasons regarding the

Sea and Land make distinct Territories, and by the Laws of England the Land is called the Realm, but the Sea the Dominion; and as the loss of one Province doth not infer that the Prince must refign up the reft; so the loss of the Land Territory doth not by concomitancy argue the loss of the adjacent Seas. It is no more necessary that every Sea-Town should command an hundred miles at Sea, than that each City should command an hun-

shores; for the Lancastrian Line, which yield a Colour for the use of the

dred miles by Land. Julius Paucius de Domin. Maris Adriatici.

Port-cullis

Vide part of the Record.

And the case

39 Elizin B.R. Sir John Con-

3. part 72. the

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for the right unto the Sea ariseth not

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Port-cullis in the Royal Banners of England; yet as in reference to the Maritime Dominion Henry the Eighth did embellish his Navy Royal therewith, and Queen Elizabeth stamped it upon those Dollars which she deligned for the East-India Trade, fignifying her Power of shutting up the Anno Doming Seas, if the thought fit (as by a Port-cullis) with the Navy 1600. Royal; this Dominion of the British Seas did Authenticate the Proclamation of King James, ordaining the Flemish at Anno Domini London and Edinborough to take licence to Fish: this justi- 1609. fied the like Proclamation by the late Royal Martyr King Anno Domini Charles, and warranted by the Earl of Northumberland in 1636. his Naval Expedition.

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That Prescription is valid against the Claims of Sove- will Fulbecks raign Princes cannot be denied, by any who regard the Pandeets of the Holy Scripture, reason, the practice and tranquillity of the Law of Nations World : and that true it is, the modern Dutch have pre- The King atended, if not dared, to challenge the Freedom to Fish gainst Sir John in the British Seas, by Prescription; but it is likewise as true Byron. Bridgthat Prescription depends not upon the Corporeal but the man, sol. 23; Civil possession, and that is retained, if claim be but made 24,25. often as to barr the Prescription, the which hath been always made evident; first by frequent Medals, next by punishing those that refused it as Rebels, by guarding of it; and lastly by giving Laws time out of mind on it, which evidently proves that the Civil possession is not relinguished; and our Kings constantly claiming the Dominion of the fame, none else pretending, all Nations acknowledging it to be in them, and the same never questioned, till those modern Durch (of yesterday) arose.

XV. The importance of the Dominion of the Sea unto this Nation, is very great, for on that alone depends our Security, our Wealth, our Glory; from hence it is that England hath a Right to all those advantages and emoluments, which the Venetian Republick draws from the. Adriatick Sea, where the Ships of the Grand Signior, of the Emperour, King of Spain, and Pope pay Customs, to maintain those Fleets, which give Laws to them within the Gulph; 'tis hereby that the English can shut up, or open these Seas for Ships or Fleets to pass or repass them; whereto Queen Elizabeth had so special a regard, that when the King of Denmark and the Hansiatick Towns folicited her Majesty to permit them free passage, they transport-

Vide poftea in Chap. of Cuftoms. June 30. Anno 1598.

transporting Corn into Spain, she refused them; and when a Protestant Fleet of Hamburgers and others, had prefumed to do fo, notwithstanding her prohibition, she caused her Navy Royal to seize, take, burn, and spoil them, when they were passed her Maritime Territory, within fight of Lisbon; yielding this reason for her justification, That they not only relieved her Enemy with provisions, but had prefumptuously made use of ber Seas, without chraining ber Kopal Permission for to deing : 'tis from hence that the Crown of England can justly demand an account of any Ship or Ships occurring in those Seas, what's their business, and what their intentions are; and prohibite any Prince or Republick, to enter there with potent Fleets, without preacquainting his Majesty, and obtaining his Royal Permission; without which Dominion and Soveraignty, England can never live fecure on shore, it being easie for any Foreign Fleets to amuse us with specious pretences, and in their passage to invade and furprise us. Thus while the Turk pretended to fail for Malta, he occasionally possessed himself of Canea, in the Isle of Candia; many such presidents do occur in History: And in fear of such surprisal, the Athenians (being Lords at Sea) did exclude the Persian Monarchs from fending any Ships of War into any part of the Agean Sea, Rhodian, Carpathian, and Lydian Seas, and that which tends to the West, towards Athens; the like caution was used by the Romans against Antiochus and the Carthaginians; and the Turk prohibits all Nations, faving Albert. Gentil. his Vallals, to enter the Black Sea or Pontus Euxinus, and

Selden lib. I. cap. II.

Hisp. Advocat. also the Red Sea; and that 'tis by virtue and force of this 1. 1. c. 14. Vide Right that the British Nation can drive on their own Com-Mr. Secretary cookesLetter to merce, navigate themselves, and permit others securely Sir will. Bofwell to trade with them. 'Tis true that the Dutch have pre-

April 16.1635. fumed some years fince, to violate the security of the British Sear, by the attacking the Allies of England, not only within the British Seas, but in her Harbours, attempting The fight of to purfue a French Vessel up almost to London, and have

the Dutch with more than once * attacqued the Spanish Fleets in her Roads, the Spanish under the protection of her Castles, and that against the Fleet, in the Bownes , 1630. Scilicet hoc factum Hollandorum est contra justitiam omnem pro certo , & contra reverentiam que partibus & territoriis debetur alienis. Alb. Gent. Hispan. Advocat.

1365 1. cap. 140

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Laws of Nations, and the Peace of Ports, in which for the time they seemed to cloud the Honour of the Nation, but fatisfaction for indignities of that nature, though flow, yet are fure, and should such as those have been longer tolerated, beloved Britannia must become a prostitute, by a Confederation of those States, or take Pass ports for her Commerce; but the Royal Martyr's goodness was no longer to be trod on, his Heart and his Cause were good, and though those unhappy Times (which were crooked to whatfoever feemed straight) did hinder the accomplishments of his entire intention for satisfaction; yet those whom the just God of Heaven was pleased for a time to permit as a punishment to this Nation to rule. did not want in the fu filling; for so soon as he was pleafed to stay the fury of the Intestine Sword, their hearts took fire from that flame that had formerly been kindled in that Royal Breaft, and having prepared a Fleet, in order to the treating as Souldiers with Swords in their hands, they were in the like manner assaulted in their Territories in the Downes (but the Dutch found then Anno Domini what it was (though two for one) to affault a British Lyon 1552. at the mouth of his Den) intending, if possible, to have destroyed the English Power, but were frustrated in their defign, being feverely beaten home to their own doors; and afterwards those that then had got the English Sword in their hands, begun to consider that the Victory must be pursued, as a season fit to affert their Ancient Right and Soveraignty of the Sea, and then those people thinking that the odds before was not enough to destroy the British Fleet, they equipt out a Fleet greater and far more numerous than the English, under the Admirals, Van Trump, De Witt, the two Evertsons, and Ruyter; but they suffered the same Fate as their former, about some thirty four of their Ships on the Coast of Flanders, burnt and taken, and the rest chased home to their Ports; and not long after followed the total defeat of their Naval For- About the 8.05 ces, accompanied with the death of Van Trump by the Aug. 1653. English, under the Admirals, Blake and Monk, who had funk and fired about thirty more of their Ships of War (no quarter being given till the end of the Battle) fix Captains, and about a thousand Men were taken Prisoners, and about fix thousand slain. Of their Presumptions since F 3. (amongit

June 2, and 3,

(amongst other things) in denying the duty of the Flag, and what punishment and check they have had for the fame, to what condition they have been reduced, and made to acknowledge that Dominion and Superiority to that Crown (under which their Ancestors humbly * be-* Offered to fought the acceptance of the Soveraignty of the Nether-Queen Eliz. lands; might be annexed and protected) is now fresh in Cette-cy entre autres merite our memories; fo high and of fo great Importance is this bien une confi-Dominion and Soveraignty fignified by the Duty of the Flag deration Speciale, Que la con- in the British circumjacent Seas.

juntion desdits
Pays de Hollande, Zelande, Frize, & des Villes de l'Escluz, & Ostende en Flandres, avec les
Royaumes de vostre Majcsté, emporte & soit l'Empire de la Grande Mer Oceane; & par consequent une assurance & Felicité perpetuelle pour les Subjetts de vostre Serenissime Majcsté.
John Stows Supplement to Hollingshed, An. Dom. 1585. Vide Sir Walter Raleigh,
lib. 5. cap. 2. S. 2, & 3.

CHAP.

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CHAP. VI.

Of the Right of Preding or Seizing of Ships 02 Bariners for Serbice Bublick.

I. That fuch Right is excepted in the Law of Dominion.

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II. Whether the Ships of Nations who VII. Objections legal refuted. are in War at the same time, may be preffed, the danger being equal.

III. Whether this Right extends to Ships to fight, and no more, or gives a power to trade.

IV. By the Laws of England the King may seize. V. The reason why such power was

vested in the Admiral.

VI. That such a Right of compelling

Men to ferve in Naval Expeditions may be.

VIII. Of the ancient punishment of

fuch deferters of the Kings fervice. IX. Concerning the feveral Statutes this day in force touching Mariners and Souldiers.

X. Whether it be lawful for a private Man to execute Juflice on such as fly and desert the service. XI. Where a general Commission is

given to Men to execute Justice.

I. THE Civil Law, though it can command nothing which the Law of Nature forbids, nor forbid what it commands; nevertheless it may circumscribe natural liberty, and prohibite what was naturally lawful: and also by its force antevert that very Dominion, which is naturally to be acquired. Hence it is that Princes, by the Law of Nations, may acquire a Right of use, of things that do belong to private persons; for property hath not (as hath been faid) swallowed up all that Right, which rose from the common state of things; because as all Laws are to be construed as near as possible to the intention of the Makers, fo we must consider what was the mind of those that first introduced singular Dominions: now the Rule to construe that, must be as near as possible to na- pona, aut male tural equity, and that in extreme necessity that old right aut necessario of using things should revive as if the things had remained facinore retentacommon, the same standing with the interest of all hu- Liv. lib. 24. mane Constitutions; and therefore in the Law of Dominion extreme necessity feems excepted. Hence it is that the Vessels and Ships of what nature or Nation soever F 4 that

* F. de Navibus non excus. C. l. 11. tit. 3. and Pekius on the same Law.

that shall be found riding in the Ports or Havens of any Prince or State, may be feized on, and imployed upon any service of that Soveraign that shall seize the same, being but a harmless utility, not divesting the Owners of their interest or property.

II. If a Ship of the King of Denmark be in the Port of London, and the Swede is in War with that Prince; and it happens at that time the King of Britain is in War with the Spaniard, now the Possessor is here pressed with an equal necessity, and by the same argument is rather obliged to the defence of his own Country than another. whether by the Law of Nations the Ship ought to be detained, hath been doubted; most certain they may: who quando fine de- would not pluck a shipwrackt Man from his plank, or a wounded man from his Horse, rather than suffer himself to perish? to flight which is a fin, and to preferve, the highest of wisdom; besides, in the taking of the Vessel the right is not taken from the Owner, but only the use,

ti non molefta? which when the necessity is over, there is a condition of 1. de offic. I. restoring annexed tacitly to such a seizure.

> And doubtless the same right remains to seize the Ships of War of any Nations, as well as those of private interest, the which may be imployed as occasion shall be present: So the Grecians feized + on Ships of all Nations that were in Ports, by the advice of Xenophon; but in the time pro-

vided food and wages to the Mariners.

III. Whether this Right extends fo far as to give Princes a power to feize in order to traffick, may be some question; certainly if the Traffick be for such Commodities, 10 Ed.3.m.16. as Mafts, Timber, Tar, Powder, Shot, or other Commodities or Accourrements of Arms, or Naval provisions of offence necessary for the defence of the Realm, it may be done (but then it is just, fraight * should be paid) for what hurt can it do me to let another have my Boat to pass over a Ford, if he rewards me? and if that be answered, the Owners are at no prejudice, for this is but a harmless utility.

IV. By the Laws of England there is no question, but 12 E. 3. in the the King may feize, and it appears by very many ancient Black-Book of the Admiralty Records, that he might do it; and it was one of the Artip. 26. and 27. cles of Enquiry amongst others, Item, foit enquis de 6 7oh. m. 11. Reis, qui font arrelises pour le ferbice du Mop, ou pour 9 join. m. 3.

Quidni enim (inquit Cicero) trimento suo poteft, alteri communicet , in iis que funt accipienti utilia.dan-

+ De Expeditione Cyri.

* 23 Ed. T. Rott. 77. in the Exchequer.

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autre raisonable cause per les Officers du Mop, ou de 24 Ed.2.m.17. l'Admiral, a debzifent l'Arreft, a par les quelles abant. 11 R. 2. m. 13. dictes Beis font emmenes & retamer les Mariners qui Rott. Franc. font ozdonnes pour le ferbice du Mop ; e ff retrarent , e en cas que homme soit endite qui la debzuse l'Arrest en sa Refarrellee pour le ferbice du Mop, a de ce foit conbide par ri. il perdea la Ref sill na grace du Rop ou du bault Admiral, & pour ce quil a effe pluffeurs fois debatu en Angleterre pour les arrelles des Defs, quant le Kop amande Dergeants d'Armes, ou autre Ministres pour arrefter Defs al ceps du Kop, a les Seigneurs des Pefs font henus debant l'Admiral, a allegment que leurs Deis nestorent mpe arrestees, ozdonne estoit au temps du Kop Richard le Primier a Grimsby per adbis de plusieurs Seigneurs du Ropalme, que quant Refs feront arreftees pour ferbice du Mop, que le mop efcripza par fes Lettres Patentes a l'Admiral d'arrefter les Pets plus ou moins a la boulente du Mop, a filon ce quil a befoin, a l'Admiral efcripza au Kop ou au Chancelier d'Angleterre les noms des Pefs ainsi arrestes assemblement abec les noms des Beigneurs & Maiftres d'icelies, g en tel cas le Beigneur de la Def ne le Maistre ne viendzont pas a dire que la Ref nestoit mpe arrestee ne a ce ne feront op3, and that upon fuch Arrests broken, the parties might be punished and fined.

Again, Inquiratur si arrestatus, ad serviendum Regi fre- De Offic. Admigit arrestum, hujusmodi transgressor stat in gratia Regia sive ral. Anglia per Admiralli sui utrum voluerint committere Carceribus manci. Roughton, Artici pandum vel finem facere, in hac parte si arrestum hujusmodi

factum manifestum fuerit cognitum.

If the Admir al by the Kings Command arrests any Ships for the Kings fervice, and he or his Licutenant return and certifie the Arrest or a List of the Ships arrested into Chancery, no Master or Owner of the Ships so arrested, 28,29.5 157, fhall be received to plead against the return, pur teo que 158. l'Admiral & son Lieutenant sont de recozd.

Item, Inquirendum de omnibus Navibus que ad serviendum Domino Regi super mari arrestatæ suerint, & postea Domini possessores, sive Magistri dolo & fraude à servitio huhusmodi se subtraxerunt in deceptionem Domini Regis, qui fi inde postea indictati fuerint, & convicti super hoc, naves Que Domino Regi forisfacta per ordinationem Domini Regis Richardi

The Black-Book of the Admiralry, fol. 15 R. 2. C. 3.

Of pretting Ships and Wariners.

Richardi Primi; & si Domini, Possessores, vel Magistri hujusmodi inde coram Domino Rege & Cancellario suo per aliqua allegaziones se aut naves hujusmodi excusare voluerint, si
Admirallus vel locum tenentes sui per Literas suas Patentes de
arresto hujusmodi sacto sidem secerint pleniorem, Domini, Possessores, aut Magistri pradicti nullo modo audiri debeant, seu
eis sides quovis modo adhiberi, eo quod Admirallus & locum
tenentes sui sunt de recordo.

And if the Ship so arrested break the Arrest, and the Master or Owner thereof be indicted and convicted bebant l'Abmiral, by the Oath of twelve men, the Ship shall be confiscate to the King, which power the General maintains in all places where he has power, and the same seems to be provided for in the latter Clause of 1 s. R. 2. Ca. 3.

Spelmanni Concil. Tom. fol. 520, 521.

Spelmanni fol.

Navalis.

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Cro. Arg. of Hampdens C.

called the Ship

money C. fol.

79, to 100.

By King Ethelred, his Bishops and Nobles in the General Council of Enham Anno 1009. for the setting out a Fleet every year, and the punishment of those who hurt or spoiled any Ship, or deserted the service, especially if the King was present in the Expedition, amongst others it was Enacted, Si quis Navem in Respub. Expeditionem designatam vitiaverit, damnum integre restituito & Pacem Regis violatam compensato; si verò ita prossus corruperit, ut deinceps nihili habeatur, plenam luito injuriam & lasam praterea Majestatem. So Sir Henry Spelmans Version out of the Saxon Copy renders it, but the ancient Copy hath it more largely.

Naves per singulos annos ob patria defensionem & munitionem praparentur, postque Sacrosanctum Pascha cum cunctis utensilibus competentibus simul congregentur; qua igitur etiam pæna digni sunt, qui Navium detrimentum in aliquibus persiciumt? notum esse cupimus, quicunque aliquam ex Navibus per quampiam inertiam vel incuriam, vel negligentiam corruperit; & tamen recuperabilis sit; is Navis corruptelam vel fracturam ejusdem per solidam prius recuperet, Regique deinde, eaque pro ejusdem munitionis fractura sibimet pertinent. rite persolvat.

Most certain it is, that the Kings of England have in all Ages, by their Writs and Patents, commanded not only the Admiral, but the Wardens of the Cinque Ports and others, to arrest and provide Ships of War and other Vessels, and impress and provide Masters of Ships, Seamen, Mariners, and all other necessary Tackle, Arms, and

and Provisions for Ships, for the defence of the Sea and Rot. Scotia 10 the Realm against foreign Enemies, or for transporting E.3. m.2.to 17. of Armies paying their fraight (if not bound thereto by te- intus & dorl nure) as well as to elect and provide all forts of Souldiers, to 28. Carpenters, and other Officers to be affiftants in their feveral Expeditions.

But Fishermen or Mariners pressed for the Service, are 1 Eliz. cap. 12. not to be imployed as Souldiers, but only as Mariners; Vide Stat. 16, unless it be in cases of great necessity, or bound thereunto 17 Car. I.c. 15.

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And Watermen that shall withdraw themselves in time 2 0 3 P. & M of pressing, shall suffer a fortnights imprisonment, and be 6. 16.

prohibited to row on the Thames.

V. The reason why the Admirals had such power given them, was because they being sometimes called Capitanei, and Gubernatores Flotarum, they had their ordering and governing of the Ships of War, and the raising and fitting up fuch Ships for the Navies, as they thought fit; other times called Custodes Maritimarum partium, their duty being to provide all Naval provisions, as well to supply the Kings Navies occasions, as to gratifie any other of the Kings Friends, when diffress should constrain them to touch in his Ports, that his Subjects might receive the like retalia- Vide Sir Henry tion again; they were called Capitanei Nantarum & Ma- Spelmans Gloff. rinellorum, as in reference to the deciding all differences in tit. Admir. amongst those in the Kings service, and punishing of Lambert Arfuch as transgressed; and as the place was great, so the cheion tit. Adpower was large, especially in all things belonging to the miral. fol. 42. Navy-Royal, in which they had the Supreme rule and Government in all things belonging to it. He fate formerly in the Kings House, and there kept his Court, as the French Admirals do at this day at the Marble-Table, in the Kings House at Paris.

And although there feems no question but the King may press Ships, yet there have been those who seem to doubt, if not to question, whether he may press men to ferve; for my own part I think he may, my reasons are thefe: It is lawful for every man to addict and yield up himself to whom he pleaseth, as appears both out of the Exod. 21. 6. Hebrew Law and Roman Law; why then may not any Inflit. de Jure people, being at their own dispose, give up themselves person. S. servi

to their Prince or Soveraign, fo as to transcribe the right autem. Gill. 1.2.

of commanding their aid and help, as often as need shall require (it is not here inquired what may be prefumed in a doubtful case, but what may be done in point of right) most certain such a power may well be done, and that grounded on great reason; as if the Common-wealth should happen to be invaded by such a one as seeks not only the subversion of the Government, but the destruction of the people, and they can find no other way to preferve themselves, but that the Supreme power should be vested with such a Prerogative, as to inforce or press the Inhabitants to ferve in Arms in the defence of the fame, and the contempt of which to punish; or if they should be opprest with want, and that supplies of provifions can no ways be had, but by compelling another by force to exhibite the common offices of humanity to a Nation in whose Territories a famine rages, that the Inhabitants should on such extraordinary occasions be compelled by force to ferve in Arms.

And this Dominion may be obtained feveral ways, either by a voluntary refignation to a Conqueror, as they of Capua to the Romans, Our Land, the Temples of our Gods, all Divine and humane things we yield up into your hands, O ye Conscript Fathers. Again, Freedom may be granted to all by a Conqueror, except Mariners, which should in cases of necessity be excepted, or that some Prince, who will not fuffer any Mariner to go out of his Dominions, without subjecting themselves to such a reasonable command, besides the Majority of Nations on such grounds, may abdicate from a part of them the entire Freedom of that

member.

Tacitus.

mans are every one Master of his own house, but are almost on every occasion subject to their Lords, especially The Irish Cosherers, which were reprehenin their Goods. dinations, when the Chief Lord and his Retinue came to his Tenants house, they fed upon his provisions till they were fpent, all being folely at their devotion. And as to

Nor are there examples of this kind wanting; the Ger-

the Sea, the King of Britain may at this day restrain Merchants or Mariners to pass out of the Realm, without li-2 E. i. m. 17. cence; and the various tenures that are introduced, which Rot.fin. 31 E.I.

num.44.Ro.Pat. 17 H. 6. Ro. Cla. in dorf. Vide the Case of Bates, in Lanes Reports, fol. 4.

Cobe 2. Inflit.

fol. 358.

2 E. I. Memb. 18. Rott. Pat. d shall

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is prefumed were fince the Conquest, were no other but the will of the Conqueror; for the right is not measured by the excellency of this or that form, but by the will.

VII. And though it hath been conceived by fome, that the King cannot press men to serve in his Wars, giving their reason, that of old he was to be served either by those that held by tenure, those that covenanted by In- coke 6. part. denture to provide men, or those who contracted with Case of Soulthe Kings Officers for wages and entred into pay, or those dier. Vide the that were in prison for the Kings debts; but that only fol. 71. extended to those Wars that were by Land: not one word in all those Acts, or Muster Rolls, that any ways And the Star. mention the least of Mariners; and yet what vast Fleets whichprovides were in those days? But on the other hand it hath been punishment for always accultomed to press such fort of men for the Naval those Water-men who shall Expeditions. The ancient Records that mention fuch per-hide themfons subject to press by Law is that of 40 E. 3. commonly selves, does ecalled * The Inquisition of Queenborough, wherein it was vidence what expresly in charge amongst others, to inquire of those the Common Mariners that were pressed for the Kings Service, and de the right of ferted the same: So likewise by those other Articles tran-preffing, which flated by Roughton, it is in express charge to the Jury to certainlywould present those that being prest to serve, brake the Kings never punish Arrest, in order to their punishment; and in those days it those whom was esteemed an high offence: and the Oath which the Fury then took being impanelled, was this:

This bere fee sop Lozd the Admiral, that I Jonathan 3. in the Black Nalh thall well and trulp enquire for our Lord the Bing, and well and truly at this time then ferbe at this Court of th' Admiralty, prefent at moch, as I habe acknow fol. 69. Art. 10. leche, or may babe by information of end of my fellows, of all mane Articles of circumflances that touchen the Court of the Admirate and Law of the Sea, the which shall be grate to me at this time; and I thereupon swozn or charged, and of all other that may renew in my mind, and in thall for nothing lette, that is for to fap, for Franctife, Lozofbip, Minreden, Aliance, Freindftip, Lobe, Book of the Batred, Enbre, Chemite, for deed of loft of Boone, for Admir. fol. 17. none other case that I shall foe doe, the Kings Counseils, my fellows, mine owne, will and truly bele what oute fraude oz malengen, fo God me bely at the bolgdome, and

by this Work.

Law was as to they could not preis. 2. ADT. 40 E.

Book of the 33,34. Art. and

VIII. And

VIII. And as the enquiry was strict, so was the punish. ment very great : Item, qui fugiet à Domino vel socio sue Lamb.inter Lee. Edovar, f. 139, pro timiditate belli vel mortie in conductione Heretochii sui in 13 Car. 2.cap. 9. expeditione navali vel terrestri, perdat omne quod suum est. & fuam ipfine vitam, manus mittat Dominus ad terram quam ci

antea dederat.

IX. In the Service of the King two forts of persons were always capacitated to attend the Navy-Royal in their Ex. peditions, the one a Salt-water Land-Souldier, the other a compleat Mariner or Sailer: It was a doubt, whether fuch a Souldier, departing from the fervice, were fubied to any other punishment than that of Martial Law, which can at no time be executed in England but when the Kings Standard is in the Field; thereupon it was provided. That if any Souldier being no Captain, immediately retained

7 H. 7. cap: 1.

3 H. 8. cap. 4.

raigned.

with the King, which shall be in wages and retained, or take any prest to serve the King upon the Sea, or upon the Land beyond the Sea, depart out of the Kings service without licence of his Captain, that such departing be taken, deemed, and adjudged Felony. And that all the Justices in every Shire of England, where any such offenders be taken, have power to enquire of the said offentes, and the same to bear and determine as they do and may do of Felony, &c. expressed in the Kings Commission to them made, as though the same offences were done in the same shire; and also that the departing of such Souldiers, and also their Retainers, if it be traversed, be tryed in the same thire where they are for such a cause arrested and ar-

These Statutes were made, because the Statute of 18 H. 6. Cap. 19. was looked upon not to be sufficient, for that that Act had reference only to the ancient Tenures, and those that covenanted with the King to provide Souldiers: whereupon a question afterwards arising, whether feveral who having then taken prest Money to ferve the Queen against the Rebels in Ireland, and had departed and withdrawn themselves from the service, should be within those Statutes, in regard some doubt seemed to arise on the same; but it was resolved by all the Judges of England, that those two Statutes of 7 H. 7. Cap. I. and 3 H. S. Cap. c. are all one in effect, and were perpetual Acts: the great doubt and question, whether the Statute of 18 H. 6. Cap. 19. did extend to Mariners and Gunners

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41 Eliz.

Cale 6. pert. fol. 27.

Raftal doubted in his Abridgment

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ferving on the Seas, and taking wages of the King, was in Parliament not long before cleared in these words: That the faid Statute made in the eighteenth Year of the Reign of H. G. in all pains, for seitures, and other things, did, doth, and hereafter shall extend as well to all and every Mariner and Gunner, having taken or who hereafter shall take prest or wages to serve the Queen Majesty, her Heirs and Successors to all intents and purposes, as the same did or doth unto Souldiers, any diversities of opinion, doubt, matter, orabing to the comrary thereof notwithstanding: So that now Souldiers and Mariners deferting the fervice, did feem to be in the fame condition in reference to punishment; but yet doubts and ambiguities have rifen, but I think the queltion is now fetled by the Statute of 14 Car. 2. cap: which provided for Vide poftes Cap. Df the Pabal Wilitary part.

X. If fuch persons shall so desert the service, it hath Non solis ducibeen a question, whether a private person under the same bus aliisque poobedience meeting with fuch a deferter, might not put tentibus innahim to death; it hath been conceived that he might, and immorari bene the act is lawful, and the party that flays him hath a true agendi proposiright before God, as impunity before men: But that is tum, sed cuique to be understood partly by the words, and partly by the volenti & licer letter of the Law : for if the Law gives indulgence to & hanellum eft passion, it takes away humane punishment, and not the Reipublice male fault; as in case a Husband kills an adulterous Wife or commoveri, & the Adulterer * in the act; most certain it is a provoca- publicas utilition in the highest nature, and will justifie the slayer: But tates pro suis if the Law respect the danger of suture evil, by delay of viribus promopunishment, it is conceived to grant right and publick tium 1.2. 6.10. power to a private man; fo that he is not then in the ca- * That is as to

it was ruled by all the Judges in B. R. M. 22 Car. 2. in the Case of one found specially at Surrey Assizes before Mr. Justice Twisden, who slew the adulterer in the very act. Vide August. de Civit. Dei citatum. C. quicunque, causa 23. qu. 8.

And upon that very reason Queen Elizabeth denied the An. 25 Eliz. constituting of a Constable, for the Tryal of Sir Francis Co. Litt. fol. 74. Drake, who struck off the head of Doughty in partibus transmarinis.

XI. Hence it is, that every man hath a licence given him to oppose force against plundering, and pillaging Souldiers; and the next the subsequent Law about defer-

entitle him to Clergy, and fo

Df welling Sbips and Bariners.

quando liceat unicuique.

code Justin.tit. ters saith, Let all men know they have a power given them against publick robbers and deserters that run from their Co. lours, and all are Ministers of revenge for the quiet of all; to this purpose is that of Tertullian, Against Traitors or publick Enemies every man is a Souldier: and herein differs the right of killing of Exiles and Outlaws, or those whom It was in force they call Banditoes, from those kind of Laws, because in England till there proceeds a special Sentence, the Judgment of Baof the Reign of nishment or Outlawry being promulgated; but here a ge-Edw. 3. time, neral Edict, the fact being evident, obtains the force of co. Inft. 128. B. a Judgment or Sentence pronounced; the Judgment of 13 H.4. fol.4.5. the latter must be according to the Civil Law, which yet remains still in force, as to the Tryal of fuch deserters;

37 H. 6. fol. 3.

the beginning

which impunity for fuch killing, feems allowed of at this day by that Law.

CHAP

CHAP. VII.

Of Dominion established by Creaties of Alliance in general.

1. Of Treaties their ends.

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II. Of the matters considerable in the making of them, and how the overtures are made.

III. Of the various fort of Treaties, and first of those by interview.

IV. Of the pretexts general made to obtain such Treaties.

V. Of Princes equal the honour is to be paid by him in possession.

VI. Of Treaties by Princes unequal.
VII. Of Treaties secret and open.
VIII. Of things requisite for Princes

during such Treaties.

IX. Of places proper for Treaties.

X. Princes where obliged to treat personally, and where not.

XI. Deputies their demeanor generally considered in Treaties.

XII. Of the Claufes generally to be considered in Treaties general and particular.

XIII. Of the nature of Treaties generally confidered as to their ends, and where they determine by the death or dispossession of a Prince, and where not.

XIV. Of Treaties to what end, and how they have been strengthned in

XV. Of the causes ordinary procuring such Leagues.

XVI. Of Leagues by way of Mediation tending to the procuring of a general Peace with Warranty.

XVII. Considerations on Leagues defensive and offensive, and of the advantages and disadvantages thereof in reference to the Effice confederate.

XVIII. Leagues defensive construed offensive in favour of the opprest.

XIX. Contribution, the difficulty in regulating the same to the satisfaetion of the persons interessed.

XX. Of Leagues concluded by Departies, and the difficulties used to delay, by which designs may secretly be carried on.

XXI. Confideration had on Leagues made for carrying on some particular Enterprise.

XXII. Of the causes that generally occasion a Rupture.

XXIII. Of the obligation on Confederates in reference to mutual Suc-

XXIV. Of Aid granted to particular and common Allies when invaded by one another, and of Protection granted a People when oppressed, whether aid to such may be consistent with a League.

XXV. Whether the Oath taken for the performance of the League be perfonal, or binds, the Successor, and of the interpretation of the

XXVI. Of Leagues made with Princes when driven out of their Countries, whether they remain valid and firm.

XXVII. Whether Leagues may be entred into by Christian Princes with Infidels.

Reaties are occasioned by a wife and prudent care of inspecting the motions of Neighbours and of their

their Affairs, the which are generally reduced to these three Heads upon the Considerations,

I. How a Prince should govern himself with his Neighbours.

2. In gaining a Credit among them, and to have a

part in their Deliberations. 3. Is the main, which is to pierce into his Neigh. bours defigns; for those Centers being discover. ed, a Prince easily knows how to draw his Lines.

II. In Treaties, the first thing to be considered is the manner of making the Overture; and therefore it may fo happen, that of two Princes who are Enemies, the one will not feek unto the other for an accord; therefore the general Medium is, that the motion be propounded by Arginton and fome greater Prince, or by fome Neighbour that is a Friend to both *, and fometimes the Ministers of two Princes meeting accidentally, if they be imployed, yet propound an Accommodation. When a Prince or State is exasperated with another, and having gotten an advantage, will often refuse to treat any where but in his own Country, nor that unless first sought to by a submissive request, as by Letter, &c. So they of + Holland and West-Friesland considering the miserable distress and incor-Forcat, made rigible disorders of their people, did submit thus to con-

the Treaty of Peace betwixt Charles the Eighth and Lewis Sforfe. + March 8. 1652. by Order of those States, subscribed Herbert Van Beaumont, and afterwards by a Letter to the States General praying a Neuter place, April 30. 1653. then by a Petition 20 June afters

Leo ab Astzma fol. 817, 818, 825.

III. Treaties are acted either by the interview of Princes, or by persons sufficiently Commissionate for that purpose. Those that are by interview, have been often disap-

proved, though often practifed; but that depends rather on the estate of Affairs, and the conformity and diversity of Honours, and manner of living of the Princes and their by his Father people, than of the interview: that of Lewis the Eleventh in-law Bocchus, with Duke Charles of Burgundy, and of the same King and delivered with Edward the Fourth of England past fairly: and in all to the Romans; fuch Treaties they govern themselves in reference to their charles the Se- fupplies, according to the confidence which they repose venthof Franct, in each other. * But those interviews of Princes have ever Treaty with the Duke of Orleans, flew the Duke, though a Soveraign Prince. Mayer lib. 15. Phil. Comines liv. 4. cap. 9, 10,

a Steward of the Duke of Mantona meeting at creal condole in their Mafters names for the death of the Marquels of

an overture for fels their Errors.

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been observed dangerous; for Princes measure their equality, not by the extent of their Dominions, but by the absoluteness of their Power: so that he that is Supreme and independent in his own Country, counteth himfelf equal to any other Prince, how great foever. Perchance fome youthful Kings may disport and solace themselves in one anothers company, whilst yet pleasure is all the elevation of their Souls; but when once they grow fenfible of their own Greatness, (a lesson they will quickly learn, and shall never want Teachers) then emulation will be betwixt them, because at their interview they cannot fo go in Equipage, but one will still be the formost, either his person will be more proper, or Carriage more Courtlike, or Attendance more accomplished, or Attire more fashionable, or something will either be or be conceived to be more Majestical in one than the other: And Corrivals in Honour count themselves eclipsed by every beam of State which shineth from their Competitor; therefore fome hold the best way to keep great Princes together is to keep them afunder, accommodating their business by their Ambassadors, lest the meeting of their own persons part their affections, as it fell out between King Richard Richard Hoveof England and Philip of France, and Maximilian the First den in Rich. I. and Lewis the Twelfth.

IV. It is prefumed, that the personal Treaties of Princes are not for matters small and trivial; therefore it is an undoubted Maxim, That as Jealousies may be increafed amongst Neighbours, by reason of such personal interviews, fo they must find out some apparent and important pretext, which being made known and published to remove the Jealousies of their Neighbours, they may then under fuch colour and shadow, treat the most secret of their Affairs. So Pope Clement the Seventh under the borrowed pretext of a general Peace and a League against the Turks, (which founded pleafingly in the ears of all Princes) at Marseilles concluded the Marriage of his Niece with Henry the Second of France.

V. But if of two Princes, the one goes home unto the other, he is bound to do him the honour of his House, And if the Prince be inferiour to him, he commonly fends forth some of the principal Officers of his Court to receive

him;

Df Leagues by Alliance equal.

him; but if he be his equal in Quality, as being both Kings, although there be some debate betwixt them for precedence, if he comes first to the place where the Treaty is to be made, he must go in person and not by proxy.

Vide Amilius In the interview that was between Lewis the Twelfth Paulus his Hiand Ferdinand of Arragon at Savona (which then belonged ftory of France. unto the French King) Lewis the Twelfth at the apand Ferron his proach of Ferdinands Gally (before he could land) entred Supply of the same, of the life into it, accompanied only with his Guard, to testifie his of the Duke of confidence, and thereby to assure King Ferdinand of that Orleans, afterwhich he had promised he should find in him; and at their wards Liwis 12th upon the going to Land , King Lewis left the Right hand to Ferdi. nand, who lodged in the Castle, as the most Honourable failer of iffue male of Charles place, and himself went to the Bishoprick. the 8th.

VI. By the Laws of Treaties, when two Princes unequal in Quality parley, the Inferior is to come first to the place of congress there to attend the Greater: yet the contrary hath been most commonly observed upon this very reason, that he that is less ought first to wait on the greater, and from thence go to the place appointed for the Parley; and this was particularly done at the interview of Pope Clement the Seventh and King Francis the First, although

that Marfeilles were in the Kings subjection.

VIL Again, Treaties by those that are sufficiently Commissionated for that purpose, are to act either secretly or openly. Treaties close or fecret are usually made in order to the compleating or fetling of Leagues between two Princes or States, fometimes by entertaining him with whom they treat under fuch a pretext, to deceive him in the end, at other times to furprise an Enemy, or to assure a Prince of two Enemies, treating with one fecretly, the other openly, and the like. These are the ordinary policies among Princes, and wherewith the wifeft of Kings*, and lian and Ferdi- the most knowing Councils have been deceived and abused even to accept of a Treaty, when at the fame time the Pro-H. 8. proposed poser hath no other thoughts than to betray them: the a third, which Spaniard have been famous at these projects. Memorable was that delign of theirs to interrupt the League which was ready to be made between the Princes of Italy and Pope (Tement the Seventh after the Battle of Pavia, propounding unto the Pope to treat and accord, the which net only hindred the League, and staid the preparations

So Maximinand having twice abused was that he would refign up the Imperial Crown to H.8. the Refignation is fent

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of War which he might make, but also caused him to to England and discharge the Troops which he had drawn unto him for approved, 4.8. his fafety. So Bourbon, General of the Imperial Army, is to come to entertained the Pope with an accord, whilst his Army receive the marched to the Walls of Rome.

Agailgrave to Crown, and Maximilian is

to accompany him to Rome to receive the last Right of the Imperial Dignity, and having given him the Investiture of Milan in feodo more Imperiali, then in possession of the French, and in enmity with the House of Austria: all things being thus concluded, and H. 8. having paid the monies agreed on, and made ready his preparations, Charles the Fifth and Grandson of Maximilian is a rub in this League, who must be first removed; thereupon the old Fox the Emperour fends a Proposal, that he would come first into the Netherlands to take off his Grandson, which while agitating, he strikes up a secret Peace with the French King, and fo H. 8. is betrayed a third time, and the agreement refused to be complied with, Cotton Treaty of Amity fol. 99.

VIII. Hence it is, that during Treaties, be they open. or fecret, the Princes or States concerned in them must watch the more carefully, have the diligenter eye, and by all the ways imaginable reinforce their strength, not only to frustrate their Enemies of all hopes to surprise them, but to the end the confideration of their Force and Opulency may put them in a posture to obtain Conditions of more advantage. Besides, it is an undeniable Maxim, That no Treaty must be held firm, valid, and concluded, unless it be ratified by that Prince or State with whom the fame is made, especially if it be with a Prince whom they detain Prisoner; for by † Law the force by the which he † Sacramenta hath been constrained to promise, will at least dispense nere qui potuit, with him fo far as to re-advise, if not to break.

quum projectis. fascibus & de-

posito Imperio privatus & captus ipse in alienam venisset potestatem? Curio in Casar, to those that had been the Souldiers of Domitius fo spake, lib. 11. de Bello Civili. Vide Grot. lib.2. cap. 13. §. 18. Pope Clement the Seventh refused to ratifie the Treaty with Duke Ferrara which he made when a Prisoner, saying, That it was a dishonourable thing for a man in life to ratifie a matter done in his name when dead, not confiftent with his Honour nor Interest. So Francis the First excused himself to ratifie the Treaty of Madrid, upon the inhumanity done to him by the permission of Charles the Fifth, they being extorted from him, nor did they take place, though the King left his Children as Hoftages.

IX. Again, as in the Parleys of Princes, the place where the interview is to be made is very confiderable; fo is it in Treaties which are transacted by Amballadors, Agents, Envoyes, &c. If it be to compleat a Peace, or fettle a

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League, it must not be too far from the Consederates, but at some convenient place, to the end they may have the more speedy Answers from their Principals; but then the first is always to be in some place Neuter, or sometimes upon the Confines of Kingdoms; for that it is neither reafonable or honourable to treat a Peace in the Territory of ones Enemy; but the latter touching Leagues may be any where. That of Edward the Fourth with Lewis the Eleventh was in the Territories of the Duke of Burgundy, but that was personal: And that between France and Spain, concluded by Cardinal Mazarine and Dom Lewis Mendez, de Haro, Plenipotentiaries of both Crowns, was in the Isle of Pheasants in the River Bidassoa upon the Confines of the Pirenean Mountains.

November 7. ₹659.

> X. Ambassadours having received Orders to treat, the Prince to whom fuch are fent, is not by the Law of Treaties bound to treat perfonally, but only to depute fome of his Council for that effect; the reason is, for that the Dignity of a Prince may receive some detriment, which cannot be maintained amidst the contestations

which happen in Conferences.

But if an Ambassadour be deputed as Lieutenant to a Prince, there indeed such Commissioner is not bound to treat but only with the Prince himself: and so it was where the Bishop of Gurgia, was deputed by the Emperour to Pope Julius the Second; the Pope commissionated three cipum, & de eo- Cardinals to treat with him; but the Bishop having notice in what quality he was like to be received, commissionated three Gentlemen to confer with them, excusing himself upon other affairs, which afterwards was explained, that he came not as a fingle Ambassadour, but as a Lieutenant to the Emperour, in the which Quality he had been received at Rome by the Pope: yet it hath so happened, that Ambassadours, if not admitted to a personal Treaty, have refused the discharge of their Commission, and so did Chancellor Marvel, Ambassadour from the French King, who delivering his Message to Philip Duke of Burgundy, was interrupted by Charles the Dukes Son, I am fent (faid he) not to treat with you, but with your Father; and Mr. Wade, who being commissionated by Queen Elizabeth to Philip King of Spain, would by no means admit himfelf to be turned over * to the Spanish Privy Council, but

Julius Ferretus rum fide & officio.

There is commonly in the Instructions . provided for the Ambassadour in that point, if the matter should come into debate. Phil. Comines lib. I. *Cambden Eliz. in An. 1584. fol. 380.

would either have Audience from the King himself, or would return without it.

XI. The Deputies being affembled, their Seats are confiderable, they having no power to quit any thing of the rank which their Masters ought to hold; and by the Law of Treaties the first place is at the head or end of the Table, (if there be one) the second is the first on the right hand, and the third is the first on the left hand of him that is at the end: and if there be many Deputies to one Prince, they usually sit at one side, to have the more facility to consert together, if it be needful.

XII. The Ambassadours having concluded and settled so fulius the their places, their Commissions of each side are to be in Second did, spected and considered: and therefore it is an undoubted who sinding Maxim, That when they are general or ambiguous, the himself prest to make Peace and plain, yet there may be wanting power to conclude, sent Cardinal or having power to conclude, it may be with a Salvo, Final and Bi-

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The principal Clauses generally are,

1. Either for Peace or Truce.

2. For Restitution of that which they pretend hath power to conbeen unjustly taken away.

3. For the Cession of Rights.

4. For Limits and Bounds, the which if they cannot inflance of the regulate, they put them in suspence, or else they Consistory.

make some Act which may interrupt the prescription of him which holds them.

5. For passage, with Consignation of Hostages.

6. For Forts or Castles for Assurances.

7. For an Offensive and Defensive League.

8. For Neutrality.

In the managing of all which, and of all other matters proper for such Treaties, a special regard must be had not to move for a person odious to him with whom the Treaty is made, nor to yield to the first demands, though never so just, but resist them stoutly; but if danger is eminent, then it is a certain Maxim, Not to study so much to Negatiate with advantage, as to provide for safety.

XIII. Treaties which are made with our Neighbours as Friends, are called *Treaties of Alliances*, equal or unequal. The equal is either of fingle Friendship only, for the en-

tertainment

So Julius the Second did, who finding himself prest to make Peace with Lewis 12. fent Cardinal Final and Bishop of Tivolly to Paris, but never armed them with power to conclude, this was to frustrate the important instance of the Consissory.

k

The Leagues between the Crown of France and Spain, are commonly beween Kings and Kings, Realm and Realm, and Man and Man of their Subin time past been lookt upon to be the

tertainment of Traffick, or for aid and fuccour; that of fuccour is for the Defensive or Offensive, and sometimes for both, with or against all men, or against some certain Princes and Republicks, and there Alliances are contracted, either from Estate to Estate, and for the preservation of the Estates of each other (in which case by the death of the Prince they may not be interrupted) Or else they are contracted betwixt Prince and Prince, and then the death of one suspends till a new Treaty hath confirmed it, unless there is a time certain prescribed by the Treaty, to the which the Alliance must continue after the death of the Prince: Or else they are made from an Estate to a Prince. where the death of the Prince does likewife, if not difjests, and hath folve, yet at least suspend till a new Treaty of Confirmation of the precedents, although by the Laws of England Rex non intermoritur.

firmest of Alliances. Phil. Comines lib. 2. cap. 8. And in the very Alliance with France concluded July 21. 1667. the first Article is in these words: That there be an unimerfal and perpetual, true and sincere Peace and Amity between the most Christian King and the King of Great Britain, their Heirs and Successors, and between the Kingdoms, States, and Subjects of both, &c. Vide 9 E. 4. 2. a. The League then made with the Scots, and likewise between Edward the Fourth and the Duke of Burgundy. Phil. Comin. 1.2. c.6.

* Rot. Pat. 4 74. 5. num. 4. Coke 4. Inflit. 356.

Treaty of cam-

XIV. Sometimes Alliances are contracted for an Enterprize and for one effect only, in the part in which the Allies are interessed, and such are generally called Leagues, which in England have been forgetimes confirmed by Act of Parliament .

Leagues commonly are Offensive, but in effect they tend to attempt against some one, and in the bottom are lodged Articles of Secrecy for the Enterprize : and fuch was that of Cambray against the Venetians, in which they borrowed

bray, the Conthe pretext of Religion, and the Peace of Christendom. federates of

which were Pope Julius the Second, the Emperour, Kings of France, Spain, and Arragon, Vide History of the Republick of Venice, fol. 87.

Sed ut vim pati ferendam jus Furebelli & pacis, 1. 2. 6.15. S. 17.

XV. The ordinary causes for which Princes and Repoffead vim in publicks make Leagues , are either to facilitate a Conquest, as That that was made between Lewis the Twelfth tribuat, abomni and Ferdinand of Arragon, for the Realm of Naples, or to equitate abbor- balance the Forces of one that is more mighty, in hinderret. Grotius de ing him that he grow not greater; but Arms ought not to be taken to diminish such a Neighbours power, for that fear

tear is uncertain; but prudent Leagues may be made for ciminishing their power.

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The English made a League to succour the Hollanders. not only to balance the growing opulency of the Spanish Monarchy, but likewise to increase her own by the Alli-

ance of the Dutch. Quid sequitur?

XVI. Again, Leagues may be made for the procuring of a general Peace, by way of Mediation of their Neighbours in War, and fuch was the late Treaty of Nimequen mediated by the King of England, and concluded Aug. 10. :678. between the Ambassadours and Plenipotentiaries of his most Christian Majesty on the one part, and the Ambassadours and Plenipotentiaries of the Lords States General of the United Provinces on the other part; fuch was also that League of Union propounded by His now Sacred Majesty, and afterwards concluded betwixt him and the States General of the United Provinces for an efficacious Mediation of Peace between France and Spain, His Sacred Majesty of Britain having a prospect to what afterwards happened and of a War, wherein most inevitably would be involved most of the Princes in Christendom; to the effecting of which Peace, His Majesty and the States General did obtain a promise from the French King to the Dutch, to lay down Arms, on condition the Spaniards would formally and folemnly, by a Treaty of Peace, quit to him all those Places and Forts, together with the Chaffellenies and their appurtenances, which they by force of Arms had taken in, or fortified in the then last years Expedition; or otherwise that the Spaniard be brought to transfer to the French all their remainder in the Dutchy of Luxemburg (or to the County of Burgundy) together with Cambray and Cambresis, Douay, Ayre, St. Omers, Bergue, St. Avinox, Fuernes, and Lynk, with the Bailiwicks, Chastellenies and all other their dependencies; and the French on between his King to restore to the Spaniard all Places, Territories, Majesty of which they have by Arms taken fince their entrance into Great Britain Flanders, on condition that the States General do recipro. and the States cally undertake and secure to the French, to prevail with General of the the Spaniard to confent to the fame Conditions, which once lands, conclueffected would (as was hoped) initiate the tranquillity and ded at the be the interest not only of the two Warring Crowns, but Hague, Jan. 13 of all other the Princes of Christendom. To the effecting of Anno 1668. which

Of Leagues by Alliance equal.

which there were feveral Articles agreed; and likewife it was agreed, That if a Peace should happen to be made. His Majesty and the States General should become Warran. tees, and a place left for any other Prince or State to come into the fame, who should think it their interest to keep the Peace of Christendom undisturbed, and to restore the Low-Countries to their tranquillity: there was provision made likewise by the same, for the Forces of each of the Warrantees to be used against those that should break and violate the fame, obliging them to cease the violence, and repair the party injured.

XVII. A Defensive League, which hath no other benefit

an Offensive League, which is voluntary, and from the

which either of the Confederates will easily part when he

But a Defenfive War is un- but a necessary defence, and in the which mean Estates just on his part are in a manner equally interessed, last usually longer than who gave just cause of War. The Answer of the Ambassa. hath more interest: So as in balancing the interest of the dor from Pri- one and the other, he that shall find himself accompanied vernum to the with distrust, and an opinion to be irreconcileable to perpetuam ; (

diuturnam,

Liv. lib. 8. 21.

Senate: Si bo- the common Enemy, generally proves the most firm in mam dederitis, the League. The Wisdom, Courage, Means, and Constancy of the Prince malam, hand or State is to be considered; so likewise the distance of the Places, as well in regard of those with whom they unite, as of those against whom they make the Leagues.

Pontius Samnis after restituti-Romans, and the author of the breach yielded up,expoatum (faith he) eft quicquid ex fædere Tupto irarum in nos cælestium fuit. Satis fcio quibuscunque : Diis cordi fuit

XVIII. Leagues having no other limitation, but the end of the Enterprise for which they are made, have admiton made to the ted many large debates in cases of accident: For instance, If an Enemy shall take the Country, for the defence whereof the League was made, the Question has been whether the Confederates be bound to assist him who hath lost it, in the Recovery; some have held, that the Defensive did not extend fo far: notwithstanding if there were no Treaty, which had concerned this Conquest, yet it would feem more reasonable to comprehend the Recovery in the defensive, if it be general. For as it hath for its end to preferve the Allie in his State, and that to attain unto it, the

subigi nos ad necessitatem cedendi res, iis non fuisse cordi tam superbe à Romanis fæderis expiationem spritam : And a little after, What more do I owe to thee, O Roman? what to the League? what to the Gods, the Judges of the League, whom shall I bring unto thee to be the Judge of thy anger and of my punishment? I refuse no people, nor pri-

vate men.

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Forces must not only remain in the Country of the Allie to attend the Enemy; but after denunciation and other acts of Hostility done by the Enemy, they must enter into his Country, to the end to prevent him or divert him from attempting any thing against the Allie, the Offensive being judged by the aggression, and not by that which follows: by a stronger reason they ought to enter into the Country conquered from the Allie, for the recovery thereof; but excuses in this kind proceed from those who fail in their faith, courage, or means to recover. XIX. Contribution is one of the main ingredients in a An. 1515. Vide

League, and is of great difficulty to regulate. It is made Sir Robert Coteither in Men or Money; the men are entertained by all ton Remonst. of Parties, or by him only that hath need, or otherwise as the the Treaties of League is. Henry the Eighth made a League with Francis Amity and Marriage. the French King against the Emperor Maximilian and Ferdinand, for the Recovery of Milan, which he did, for the protection of his Neighbour, and Reduction of the Swiffe from the Imperial side, for which he employed the Bastard of Savoy; the agreement was of reciprocal Succour of 10000 men, if the War were by Land, and of 6000 if it were made by Sea; and in all other occasions the French King was bound to affift the King of England with 12000 Lances, and he the King of France with 10000 Foot, at his charge that had need.

So where Contribution is concluded for Money, there are difficulties that do arise from the Person or Place where it must be kept; to deliver it into the hand of the strongelt, is not fafe, for fear they shall not be able to call him to account; to lay it in a weak place, were to expose it to the attempt and force of the strongest, or to him that shall first take Arms; but it has been usual for the summ not to be

advanced, till after the War begun.

XX. Leagues concluded by the Deputies of the Confederates, there fometimes falls out a difficulty who shall ratifie and declare himself first. In the League which was Andrea Mauromade between Francis the First, the Pope, and the Princes ceni Hist. Ven. of Italy, the King refused to ratifie until the Pope and Venetians had ratified before him, and in that he fo cunningly wrought, that he procured the Collegues to declare and begin the War, whilst that he treated secretly for himself, to the end he might make his Conditions with more

Of Leagues by Alliance equal.

more advantage; this he declared was for fear those Italian Foxes (hould hew him the like.

XXI. Leagues made for an Enterprise succeed seldom according to the hope of the Allies, if the Enterprise be long; for besides that the preparations be long, the opinions divers in the pursuit, the resolutions inconstant, the interests of Princes or States in a League may change with for the several time, or with the practice of him against whom they are in League, in withdrawing some one of them, or making him to fuffer more loss than the rest; for seeing himself force of a Con- ill defended or succoured by his Confederate, and that he dition: so Gro- was in a greater danger to lose than his Companions, he

1.2. c.13. §.15. the Venetians with the Turks, after the loss of Cyprus. XXII. The ordinary causes of the Rupture of Leagues are distrust and jealousie, as if one hath had conference with the Enemy, without the confent of the rest; if that which ferveth for the fafety of one, diminish the safety of the other, inconstancy, variety, cowardize, division, usurpation without

then studies to retire * and to make his accord apart, as did

miserant opem re the consent of the others.

So if he treats with the Enemy, not comprehending libi apud eun- the other Allies, but as Adherents; as Lewis the Twelfth left the League of the Venetians, for that they had made a Truce with him, and had prefumed to name him only as an Adherent. It was the opinion of Bryan, that if all the rupta fore pacta. Subjects of England would make War with a Confederate Prince or Republick in League with the King of England, without the affent of the King of England, fuch a Stat. 2 H.5. c.6. War was no breach of the League; and upon the same reason were the resolutions of the Judges in the Duke of Norfolk's Cafe, where the Question was, Whether the Lord Herife and other Subjects of the King of Scots, that 4. Inft. fol. 152, without his affent had wasted and burnt divers Towns in England, and proclaimed Enemies, were Enemies in Law, within the Statute of 25 E. 3. the League being between the English and Scots, and resolved they were, and that the League remained.

XXIII. The Succours that one Confederate must afford another Confederate (according to the Law of Leagues) against a Confederate, is of great consequence: Three Princes Allied, the one makes War against the other, and demands fuccours from the third; in this case if the

* If one part hath violated the League, the other may depart from it; Heads of the League have every one the tius conceives

Soluti foederis culpa sustinent, non qui deserti ad alios se conferunt, fed qui quam jurati pronon præstant. Adem, fi vel tantillum ex dictis pars alterutra trangrederetur. Thucyd. lib. 1.

19 E. 4. Vide

Hill. 14 Eliz. in the Duke of Norfolk's Cafe.

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Treaties

Treaties of Alliance be only for Friendship, it is certain In fidelitate he is not bound to give any fuccours: But if the Treaty fendali dicitur; carries an Offensive League, he must succour the most an- Et & sivero cient allied by a precedent Alliance. If the precedent Allian-velle te aliquem ces have been made both at one time, he must succour justeoffendere, him that is allied in an Offensive and Defensive League: Specialiter fuero but if the League be Offensive and Defensive of either side, requisitus, meum he ought not to succour either; but he may mediate a * Peace, tibi, Gent potero, and cause the difference to be judged by the Common Allies, Prastabo auxiwhich being propounded with a Declaration that if one mosther. de Merefuse, or having once submitted, will not yield to Judg- galopoli. ment, he will fuccour the other, as the Swede and * Nihil interce-Swiß, upon several occasions have done; notwithstanding di, quo minus in point of State on such occasions they usually balance Samniti populo their Estate, and looking more to Safety than Justice, they liberum arbitrifuccour him who being enforc't, may weaken the power- um fit. Liv. 1.8. ful, who is more to be feared; yet to unjust Wars there Grotius de Jure is no obligation; then certainly he ought to be preferred, Belli ac Pacis lib. 2. cap. 15. who hath a just cause of War.

S. 13.

Vide Monmouth History of France fol. 31.

XXIV. By the Laws of Alliances Princes may aid particular and common Allies, if they be wronged by one of the

But he which is not comprehended in the Treaty of Equals cannot Alliance, cannot be defended against him that is allied directly refuse without breach of the Alliance; therefore Mediation in War, nor defuch cases is the only hopes of the oppressed, which not ha- mand Peace. ving its effect, if the oppreffed put themselves into the protection of the Mediator, they then become in the nature Liv. 2. Polybius of his Subjects, and then that Prince is obliged to their in excerptis Lesuccour and defence, even against his Allies, and this is by gationum 35. natural Right.

XXV. By the Laws of Leagues, though the Oath binds only the Person, yet the Promise binds the Successor; for When Edward though fome do hold, that Leagues do depend upon the the Fourth was Oath as their Firmament, though that is not fo for the chased our of most part, yet the efficacy of such Leagues rests in the and Henry the promise it self, to which for Religion sake the Oath is ad- Sixth was set

up again; yet

by reason there was inserted into the same these words, With the King and Realm, that the League did remain perpetual. Phil. Comines lib. 3. cap. 6.

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Df Leagues by Alliance equal.

Ulpian. Leg. Fure Gentium. fect. pactum. D. pactis.

Adde que Helvetiis causantur 3. apud Thuanum, lib. 97. in An. 1 589. Vide & infignem locum apud Cambden. in Anno 1572. ubi de Fædere antiquo Gall. & Scot.

Quintus said to made no friendship nor fociety with thee, but with and lawfulKing of the Lacedemonians. * 11 H.7. C. I.

† 4 E. 4. I. 9 E. 4. 12. 3. Inft. fol. 7.

Ed. 4: in Ani 1470.

ded. Hence it is, that Promifes made to a Free-people are in their nature real, because the subject is a permanent matter: although the State or Republick be changed into a Menarchy, yet the League remains, for that the body, i.e. the power is still the same, though the Head be changed. And the person is inserted into the agreement, not that the agreement may be personal, but to snew with whom it is made; for if it be inferted into the League that it shall be perpetual, or that it is made for the good of the King. dom, or with the Person and his Successors, or for a time post mortem Hen. limited, the same does most apparently demonstrate the thing to be real.

However in all Leagues which tend to Peace, though there may remain somewhat, whereby words of ambiguity may arise; yet the most pious way of interpreting, hath been to account the same rather real, than personal; for all Leagues made for Peace or Commerce, admit of a favourable construction, Leagues defensive have more of

favour, offensive of burthen.

XXVI. Leagues made with Princes, although they Nabis, We have happen afterwards to be driven out of their Kingdoms by their Subjects, yet the League remains firm and good; for the Right of the Kingdom remains with fuch an unfortunate Prince, notwithstanding he hath lost his Kingdom: Pelops the just on the other hand, Leagues made with the Invader cannot be good; for his cause being unjust, is odious: but if * the people will make him King de facto, and invest him, the question is then out of all controversie; for then he is become a King regnant, and by the Laws of England, if Treason be committed against his Person, and † after he is beaten out, and the King de Jure comes to his Crown, the King de Jure may punish those Traitors with death.

> The Earl of Warwick having raised an Army in France and Flanders, invaded England, and within five or fix days after his landing, King Edward's Forces betraying him, the Earl became Master of the Realm; the King flying for protection to his Kinfman the Duke of Burgundy, he kindly in his misfortunes entertained him; yet while he was in this banished estate, the Duke of Burgundy renewed the League with the English, it being agreed, that notwithstanding King Edward's misfortune,

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the League remained firm and inviolable between the Duke Charles of Burgundy, and the King and Realm of Phil. comines England: So that for Edward they should name Henry (who 1. 3. c. 6. was newly taken out of the Tower by the Earl of Warwick, Reges quiregnis at his chasing out of King Edward) Now the true rea- exuti sunt, cum fon that Leagues remain, and are firm, notwithstanding aliis regni bonis tuch a change, is, because there goes along with them a etiam justegantacit condition, viz. of holding their possessions; and diperdiderunt. therefore the World wondred not, that His late Sacred Majesty having sworn a League with the King of Spain. expressly as he was King of Portugal, did notwithstanding receive two Ambassadours from the then new King of Portugal; and that without being judged either in England or Spain to have broken his former Oath and League.

The Duke of Guise having formed the League against Henry the Third, which was, in regard the King was fo cold in the Profession of the Romish Faith, that it was in danger to be extinguisht by the increase which he permitted of the Reformed Religion, especially seeing Henry the Fourth then King of Navarre, was of that Religion, and was to fucceed to the Crown; wherefore by the Mediation of Philip the Second of Spain, the Pope qualified the Duke of Guife, Head of that Catholick League, and Peter Matheres (which in point of Government was to fet him above the History of King) avowed him Protector of the Catholick Faith in the France in the Kingdom of France. When Henry the Fourth facceeded the Third. to the Crown, then this League for security of Religion was most violent, and the Spaniard without, hoped, by nourishing thus the division within, to carry all for himself To avoid which gin, and to answer all, the King changed his Religion, and negotiated by d'Offat, to be received by the Pope as a dutiful Son of the Church of Rome, demanding absolution for what was past, and making large promises of due obedience for the time to come. The King of Spains interest was, that he should not be received, and thereupon he endeavoured to perswade the Pope, that King Henry did but dissemble with him, and that under this disguise he would easiliest ruine the Romish Religion: notwithstanding this, the Cardinal obtained his Reception, Absolution, and Benediction through the many promises and presents which he made to His Holines, whereupon the Spaniards designs were in a moment all blown over

Life of Henry

from .

Of Leagues by Alliance equal.

from France, but fell heavily upon the United Provinces which were forely opprest, for that they apprehended the loss and ruine of their Country, and thereupon they implored affiftance from King Henry, who received their Ambassadours very graciously, and gave them assurance The King of Spain, who wanted no good intelligence in the Court of France, immediately remonstrates to the Pope, that his former intimations concerning Henry's diffimulations did now appear in the face of all the World, and that seeing His Holiness had been so credulous, he knew not now whether they should be able to fave the Catholick Faith from being subjected to the Reformed Religion or no: for whereas the Hollanders had revolted from him, only because he resolved to use the true means for the establishment of the Romish Faith among them, and that now he was in a fair way of reducing them (which conduced fo much (by His Holine & his opinion) to the establishment of the Romish Faith) Henry had taken their party against him in that work: and that at Paris he had received their Ambassadours to that purpose, although he knew they were his lawful Subjects,

This startled the Pope not a little, who charged d'Offat for having betrayed him, and put the Church in danger. This argument was as fubtil on the Spaniards fide, as changing Religion was on King Henry's; and therefore the Cardinal was not a little perplext, how to answer it to the advantage of his Master; as also coherently to the confiderations of his former reception into the Church: But at last he replied, That His Holiness needed not wonder how in reason of State, those different Religions might joyn together for political ends, without hazard of altering Religion. Thus David fought protection of the Philistins, and Abraham redeemed the sinful Sodomites. That he took it to be upon the same ground, that His Holines himself not long before, received a Persian Ambassadour, who was fo far from being an Heretick, that he never pretended to the Name of Christian: That it was a plausible argument, which the King of Spain used, in complaining of Henry's receiving and avowing their Amballadour, especially knowing at the same time that they were Rebels; and could pretend no Right or Title separate from

Vide Peter Mathews History of France in Vita Hen. A.

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his Crown: 'For Princes (quoth he) when Ambassadours in Regno diviso 'are addrest to them, never inform themselves of the gens una, pro Rights and Title of those Princes from whom they are tempore quasi fent; but whether they have possession of the Force and bentur: And Power of those places from whence the Ambassadors are Princes are to employed; for it would be an endless task, and require have an eye to an infallible true History of the World (which is not to the Power be made by man) if all the Ambassadours before their Kingdom hath Reception should be obliged, first to prove clearly to the to afford bene-World the just Right by which their Masters derive those fit one to the 'Titles and Jurisdictions, which they assume to them. other, and not XXVII. And as Leagues are Covenants or Agreements

to examine their Titles.

made by Command of the highest Powers, wherein the parties are bound over to the Divine wrath, in case they break their Faith; it hath been a famous question, Whether they may be entred into with those that are Aliens fol. 135. from the true Religion, whereof by the Law of Nature there is no doubt nor difficulty; for that Law is fo common to all men, that it admits not any difference of Religion; but the question is about the Law Divine, out of which it hath been discussed, not only by Divines, but samous Lawyers, as Oldradus, Decianus, Grotiue; upon the whole Lib. 2, cap. 14. they have agreed, that they may be entred into as well §. 8. with Princes Infidels as Christians: and that is evidently proved; for that before the Law of Moses it was lawful to contract Leagues with Aliens from Religion for an inoffensive and harmless behaviour, as that of Jacob with Laban: nor did the Law of Moses make any change, the example of the Egyptians being express in the point. true those seven Nations and other Kingdoms, as the Amalekites, that were destinated by Divine sentence to be extirpated, were excepted; but Leagues of Commerce, and fuch as pertain to the utility of both Nations, or of either party, are by the Law permitted with the profane:

So David and Solomon made League with Hiram King of

the Tyrians; and that which is very observable in the Sa-

cred History, of that action it is faid, That the Alliance was

made by Solomon according to the Wisdom which God

had given him. 'Tis very true, the Jews were generally

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very cautious of contracting with Idolatrous Princes, and the reason was, for that they had express promises of

Lib. 7. cap. 3.

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Di Leagues by Alliance equal.

Victory, but that was conditionally, i. e. if they kept the Law, which if performed, they had the less need of humane aid. But now under the Gospel such contracts have a more favourable admittance, according to that of Tertullian: So long as Israel only was his people, God did justly command mercy towards their brethren alone; but after that he gave unto Christ the Nations for his inheritance, and the ends of the Earth for his possession; and that began to be paid which was promised in Hosea, They that were not my people Fædera, aut cum shall be my people, and the Nations that had not obtained mercy non Christianie, shall obtain mercy; from that time Christ hath extended unto christianis sece- all the Law of Fraternal benignity, excluding none from our re, Constantius compassion no more than from his Vocation; and therefore cum Gothis & as it is no evil to do good to the profane, fo neither is it Vandalis, Justi- unlawful to implore their help, as Paul invoked the aid nianus cumLan- of Cafar and the Chief Captain; fo that at this day there Saracenis Theo- is no intrinfecal or universal pravity; nevertheless those dofius, Honorius, Alliances have their Circumstances or Rules of Govern-&c.cum Mauris ment, as not to joyn with them but in extreme necessity, Reges Hilpanie, according to that of * Thucydides: They that are treache-Knodolphus Hab- rously assaulted, as we are by the Athenians, are not to be spargensis. Adi blamed, if they seek for safety, and secure themselves by the

de Jure Belli Romani Pontificis c. I. Julius secundus Pontifex Turcis usus, vide Bulftrod. part. 3. fol. 28. cited in Marshes Case, the Case of Samuel Pellagy that had been Ambas. fadour to the States of Holland to treat with them from the Emperour of Morocco.

Fohannem de aid not of Greeks only, but Barbarians.

* Famous was the piety of Emanuel Duke of Savoy, who when he was able to take Cyprus by the aid of the Great Turk, refused it.

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CHAP. VIII.

Of Alliances unequal, and of Protection.

1. Of Alliances unequal, in reference | to the asknowledging a Superiority or Protection in another.

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II. Of Protections by a Prince or State voluntary or mercenary.

III. Of the Conveniencies of Such Alliances, how considered. IV. Of the Duty incumbent on the

protected, and the obligation in bonour and justice on the Protector. V. Of Alliances unequal, and of the ordinary causes that may tend to a

rupture of the same. VI. Of the causes extraordinary that may occasion the breach of such

Alliances. VII. Of Faith and affurance implicitly discharged by the delivering

of Hostages. VIII. Of the differences of Leagues contracted by Princes, through force or fear, differing from Contracts private.

IX. Of ambiguity in words, how it hath given occasion to Princes to depart from the League, and of the Reputation of Princes on such occasion preserving the Alliance.

X. Of the firmnes and afferance of Alliances , whether to be found more in Princes, or in Repub-

XI. If one party hath violated the League, whether it be lawful for the other to depart from the

XII. In the construction of Leagues, the thoughts not the words of Princes to be considered.

XIII. Of things tacitly excepted in all Leagues and Treaties, in reference to their nullity.

XIV. Of things favourable, things odious, and others of a mixt nature to be used in the interpreting of Leagues.

Negual Alliance is that which is contracted betwixt Princes or States unequal in Honour, or in Power, dius post Ariwith unequal conditions, the acknowledging the other florelem, amicinot for Master or Lord, but by Honour as the more power- tie interpartes, ful, and the better qualified, and some for Protector; and hoc ait proprithese Treaties are made with those States, which take um, ut potentions or give Pension, or which put themselves into Protection. firmioriplus du-And fuch was the League of * Protection propounded to xilii deferatur. Queen Elizabeth by the States General of the United Pro- in Grot. lib. 1. vinces, who by Joos Van Menin most humbly befought Her 63. \$. 21. 1.2. to accept of the Soveraignty and Supreme Dominion over It is the prethe faid United Provinces upon certain and reasonable thip twist un-Conditions and Articles, &c.

equals, that the ftronger have more honour, and the weaker have more help: Proculus adds, that flich a clause is inserted in the League, to fignifie the one is superior in authority and dignity ; for both are free, but are sub patrocinio, non subditione. Liv. lib. 37. Cicera Offic. 2.

* Non fine metu in posterum, quem tunc prafens necessitas averterat. Grotius Annal. lit. 3. A. E. Metoran. lib. 13. ad An. 1585. Grimfton, lib. 12. ad An. 1585.

Df Leagues by Alliance unequal.

Tribute is paid by the Subjett, or by him, who, to enjoy his liberty, pays that which is agreed upon to him that hath forced him to do it. But a Pension is held voluntary from him that is in Protection, or from him that is in all other things equal to the Treaty of Alliance to hinder the Pensioner, that he joyn not with the Enemy, as the Swift to the French, or to have aid and fuccours from him.

Leg. non dubit. D. de Cap.

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II. But that Protection is most true and Honourable, when a Prince or Republick takes upon him the defence of another, freely without reward; though fome, if not all, find it most necessary to balance honour with profit, from this Maxim, that A pecuniary interest obliges more to succoun,

than when barely obliged by Oath.

III. Again, there feems to be a kind of Protection or an Alliance, which indeed is no more than a bare pecuniary retaining. Politicians have confidered the fubject diverfly, either Absolute or Conditional: Absolute is that which is measured by the concurrence of the greatness of Forces, Treasure, Munitions, and other Military preparations: Conditional is that, the which although it be less than an absolute, yet is more fit to succent us or do us harm: in this the Neighbourhood is of very great confideration; for that a Neighbour Prince of mean Forces may more easily hurt or fuccour us, than a great Prince that lyes far off; near fuccours are always fooner ready and with less charge. And this makes the Bishop of Munster to be in that esteem with the States of Holland and the other Soveraign Princes bordering on his Territory; and the reason why he is so much the more courted into assistance and friendship is, for that his Forces being at hand, if Peace be concluded, he is the more eafily dispatched, whereas remote and absolute Princes their fuccours come often too late after the occasions to defend us, and too foon to oppress us.

IV. By the Law of Protection, he that is protected owes all Respect and Honour to his Protector, against whom if he conspire or attempt, or strays from his duty, it is lawful the protection for the Protector to make better assurance; nay, if he plea-King, revoked; fes, to make himself Master: But then on the other side, the Protector ought to defend and succour the protected, Conditions into Priviledges, to the end it might be his will to deprive them when he

should think fit. Vide Cardinal. This C. P. P. Concl. 935.

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and use him well; for otherwise he may withdraw himself from the protection, and feek another.

V. In Alliances that are unequal, there are four kinds

of Controversies may happen.

First, If the Subjects of a Prince or Republick, that is under the protection of another, have committed any This holds as thing against the League.

Secondly, If the Prince or Republick be accused.

Thirdly, If the Fellows, which are under the prote- Grotius de Jure ction of the same Prince or Republick, contend with one Belli ac Pacis another.

Fourthly, If the Subjects complain of their own Ruler. To the first, if a fault appears, the Prince or Republick is bound either to punish the offender, or render him up are equal. Name to the party injured, and fee or endeavour that damages utquisultioners

may be recovered.

But one of the Associates in the League hath no right to peccavit, satis apprehend or punish the Subjects of his Confederate.

To the fecond, the Confederate hath a right to compel tus non fit. Grot. his Confederate to stand to the Leage, and if he will not, de Jure Belli, to punish him, for that one may take satisfaction or revenge of him that hath offended; and this happens as well amongst those that have no Confederation at all.

To the third, as in Confederacies equal, the controversies are wont generally to be brought before an Affem. ing, for Princes bly of the Confederates, that is to fay, fuch as are not concerned in the question, or else before Arbitrators, or else fore Judges of before the Prince of the Affociation, as a Common Arbi- their own chutrator.

So on the other hand in a League unequal, it is agreed 6.3. \$.21.n.6. for the most part, that the Controversies be debated before him who is Superiour in the League.

To the last, the Confederates have no Cognizance. common Affairs out of time of Assembly, even where the litates nihil League is equal, the Custom is for him who is chose Chief pracipuum suof the League, to have command over the Confederates, communious reaccording to the Speech of the Corinthians in Thucydides, It bus curandis ebecomes them that are Princes of the League, not to feek their minere supra caown particular advantage, but to content themselves with an teros. In Orata eminency above the rest, in taking care of the common Interest.

VI. Though that the breach of Faith be much practifed in fuch affairs, yet there are few Princes found, which

well between Leagues equal as unequal.

l.1. c.3. §.21. This hath the fame right in Leagues that Sumat ab eo qui est ut ipfe ei qui peccavit subdi-

1.1. c.3. S.21. But that proves not any power of commanddo usually try their causes beling. Ead. l. I.

Decet cos qui Fæderis Principes funt, circa In suas quidem utimere; at in Corinthiorism.

Of Leagues by Alliance unequal.

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have not found a pretext: fome have pretended to be circumvented by errour; others by change of Affairs have pleaded an excuse, as great wrongs or inevitable loss. and apparent danger of the ruine of their States, which are the causes, wherein some say, that an Oath is not obligatory; the condition, by reason of the Oath, being impossible or unjust; to these limitations, some hold they Dlarad. Conf. 1. must not keep faith with an Enemy of the Faith, nor with him that hath broken his, nor with a Subject, nor with a Thief or Pirate; certainly if it be not lawful for a man in these cases to keep Faith, it is not lawful to give it: If it be lawful to capitulate with fuch men, it is necessary to hold what we promise, that is, (we presume) when the word is given by him that may give it, and that they rely upon it.

> VII. If Hostages are taken, he that gives them is freed from his Faith; for that in receiving Hostages, he that receives them hath relinquished from the assurance which he hath in the faith of him that gave them; fo where a Captain for his Prince gives his word without Commission, it binds not the Prince.

> VIII. Some Lawyers would judge of Treaties as particular Contracts, by which means they would stretch the Consciences of Princes; for, say they, that as a private man is not bound by that which he hath promifed by force or fear, fo it ought to take place amongst Princes and in Treaties which are made betwixt Soveraigns; but that is ridiculous, for that were in effect to banish Faith from all publick Negotiations; for there is no Treaty but what is usually made in Arms by force, or through fear to lose either Life, or Goods, or Liberty, or the State; which are causes of just fear, and may shake the most constant.

> IX. Some Princes desirous to shew themselves more irreligious in these ruptures, have taken subject and occasion upon the ambiguity of some Clauses in the Treaty, or upon Equivocation, as Charles the Fifth did; or else they feek other occasions, as attempting against those whom their Allie is bound to defend, to the end that drawing him into the field, he may lay the cause of the Rupture on him.

> But Princes, who respect such Treaties with a pious intention of preserving them, always remain constant and firm; and though occasion may offer it felf, by which they might

Gregorius, Perjurium Deo culpam impingit negligentia.

Upon the words Evning and Euig, to retain the Landgrave of Eseffe.

might get advantage by the breach; yet when they remain durable, fuch respect is afterwards had to their Word and Honour, that fewer and leffer fecurities will be demanded of them, than one whose Faith is doubted.

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X. But affurances in cases of this nature have been found more in Republicks than in Princes; for though Republicks have the fame mind, and the fame intentions as Princes, yet for that they move but flowly, it will cause them to flay longer in resolving. Famous is that of the Athenians, the answer of when Themistocles in his Oration told them, That he could the Carthagidiscover a matter in which the Athenians would reap nian Senate to great advantages, but he could not tell it, for fear the the Romansupdiscovery would take away the opportunity of atchieving on the assaulting ing of Sagunit: whereupon the Athenians deputed Ariftides, to whom tum: Ego non he should communicate the fecret, and with him should private publicgconfult about the obtaining it: They meeting, Themistocles ve confilio Sademonstrated that it was in the power of the Athenians to guntum oppugmake themselves Masters of all Greece, for the Gre natum, quecian Naval Army was then in their Ports and Protection; fed utram jure whereupon Aristides replied, The same was a breach of an injuria; no-Faith: But it was answered, It being for the publick, all stra enim hac considerations of that kind ought to be laid aside; whereupon question at q; a-Aristides being called by the People to give Report, told them, Themistocles's advice was exceeding profitable, but ift nostrum an dishonest, for which cause the people wholly refused it.

nimadverfin in Civem nofrim: Ino fecerit arbitrio, vobiscum

una disputatio est, licueritue per fædus fieri: Whether Sagantum was assaulted by private or publick Counsel, we conceive it not to be made the question; but this, Whether it was affaulted justly or unjustly; for to our selves an account is to be given by our Citizens, whether it did it of it self, or by Commission; with you alone this is disputable, whether it were a violation of the League, or no. Livius lib. 31.

XI. if one party has violated the League, the other may most certainly depart from it, for the transgression of the Articles, be it never so little, makes a breach of the agreement, unless it be otherwise prevented by Condition, * Grot. de Jure which may be, by inferting into the same, * that for every Billi ac Pacis, offence it may not be lawful to depart from the League.

XII. In all Leagues, the thoughts of Princes and States In fide guid ferare to be considered, not what they said; yet because in- seris non quid ternal acts are not visible by themselves, it is necessary dixeris cogitanthat somewhat certain should be determined, i. e. reduced dum. Cic de to Heads or Writings, otherwise there would be no obliga-

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tion at all, for then every one might free himself by affixing on his own words what fense he pleases. Hence it is, that by the dictates of Natural reason, he, to whom any thing is promised, hath a right to compel the promiser to that which right Interpretation suggesteth, for otherwise the matter would have no end. And as the reducing of the Treaties into Writing makes the Agreements plain and obvious, fo the mutual advance of the Ministers proportionably hastens the accomplishment. The Counts Avanx and Servient, being appointed for the Treaty at Munster, as they passed through Holland, they entred into a Confederacy with those States, wherein each party reciprocally did bind themselves by Articles, not only not to treat of any thing without the affent and participation of the other Collegue, but that the Treaty should be carried on fo equally, as if one of the parties should see the others business advance further than his, it should be lawful for the one to defire the other to proceed no further, till his affairs were equally advanced: which Articles bounding the approaches of each other, foon hastened the

Monmouth's Hi ftory of France fol. 28.

120

Qui promittit teptionem-Nisi causa super-Billi, 1.3. c.24. States.

end of that tedious Treaty. XIII. Again, in all Leagues and Treaties for Peace, non offendere, is there is this Exception to be supposed in the Contractors, fubintelligit ex- Unless some new cause intervene, or unless it be by the default of him with whom the League and Compact is weniat, nifi cul. made, or Affairs continuing in the same posture and state pa accesserit e- in which they were at the time of the Contract : and that jus cui promissio Saying of Ulpianus and Pomponius concerning private Comista sit; & pattio pacts, viz. That an agreement is not violated from which a sweet syrbus sic flantibus. Alber. man recedes upon a just reason and motive; is by Interpre-Gentil. de Jure ters extended to National Leagues betwixt Princes and

> XIV. In the Interpretation of Leagues and Truces, there ought to be a very great care had, in regard of the Sacredness of them; therefore in things promised or secured by fuch Leagues, fome are favourable, fome odious, fome mixt, or of a middle nature. I'hose that are most favourable, are those whose words tend to Peace, not to War, whose footsteps leave ever behind the deep impressions of mifery, devastation, and poverty, but more especially when such Leagues are made for War Defensive than otherwise; but those are called odious, which burden or oppres

oppress one part only, or one more than the other, and likewise such as tend to matter of Revenge or Punishment, or to violate fome former acts, or obligations, or the bringing in a change or innovation of what hath been constantly setled, and used before. Mixt, as where a change is pro- In L. non possunt. pounded; but that is with the Sisters of Moderation and D. de Legibus. change may be esteemed. Rule is, That in Leagues and Treaties not odious, the words are to be taken according to the full extent and propriety of popular use; and if there be more significations, the largest is best: on the other hand we are not to recur to significations plainly improper, unless otherwise some absurdity or inutility of the agreement would follow. Again, words are to be taken ever more strictly than propriety suffers, Vide exemplum if it be necessary for the avoiding of inequity or absurdity, in L. cum vi-But if there be not such necessity, manifest equity or utility rum. C. de fidel commission. in the restriction, we are to stay them within the narrowest bounds of propriety, unless the circumstances disswade. On the other hand in Leagues or Promises odious, even a figurative speech is admitted to avoid the Odium, or burden; therefore in Donation, Remission of ones Right, Dominion, or Property, they are always to be construed to those things which were probably thought on, and really intended. So aids and fuccours promised from one part only, is to be understood to be due at the charges of him who shall acquire them.

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CHAP. IX.

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Df Treaties of Truce, Reutrality, and Peace.

I. Of Treaties, the various forts. II. Of Rules in cases doubtful. III. Of Truces amounting to a Peace. IV. Of the advantages between Treaties of Truce and Peace.

V. when promoted. VI. Whether it can prejudice the pretensions of the Principal.

VII. How preserved and punished by the Laws of England.

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VIII. Of Treaties of Neutrality, the various forts.

IX. Of the advantages of the same. X. In cases of necessity where he ought to declare, and for whom.

Reaties are either with Enemies or Friends, or with persons which desire to continue Neuters with us, or we with them.

The Treaties which are made with our Enemies are either for a time, or perpetual.

Perpetual, as the Peace that is made to compose all differences, and the War that is undertaken for Conquest, or for Reparation of injuries, or to restore the Commerce.

Treaties, which are made for a time with our Enemies, are called Truces; the which are either general, for all the States of the one or the other Prince, for all Persons, and for all forts of Commerce: Or else they are particular, for certain Places, for certain Persons, and for the Commerce, and fometimes no further than a bare suspension of Arms.

II. When any one is bound by Alliance not to make Peace or Truce, without the confent of his Allie, and whose agreement feems doubtful, they add in the Treaty, that that was made it shall take place for all those the Contractors shall name, between Edw. and they fet down no prefixed time, but that it shall conthe Fourth and tinue till he refuse, and some reasonable time ascertained after; Lewis the Eleas that which was made betwixt Charles the Eighth and was like provi- the King of Spain.

fion made for charles Duke of Burgundy, but he refused, and concluded a Peace for himself apart, being angry with Edward the Fourth for making the same. Phil. Comin. lib. 4. cap. 40. So Lewis the Eleventh concluded a Truce for nine Years with Edward the Fourth when he had invaded France. Phil. Comin. lib. 4. cap. 8.

III. Some-

Of Treaties of Truce and Reutrality.

III. Sometimes a general Truce holds the place of Peace. as that of a hundred years. Such Truces are commonly made betwixt Princes that are equal in Power, as that betwixt Spain and Portugal, and will not quit any thing of their Rights by Peace; and yet defire to live quietly in the State wherein they are, satisfying by this Medium the

Point of Honour.

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IV. Treaties of Truce are many times less subject to Rupture than a Peace, which is made perpetual; for Princes or States that find themselves aggrieved with a Treaty that is perpetual, feek out plaufible reasons to for sake it, feeing the grievances cannot be otherwise repaired; but if the time be limited and expired, they may pursue that which they think ought to be granted, and the other may oppose; and if they have a defire to continue the Truce, there is nothing so easie as to renew it. Hence it is become a Maxime in State, That feeing Treaties are grounded on the Interests of Princes which change with the time, it is necessary to change and settle them at the end of the time, or to break them off: for it is in vain to trust to a bare Friendship.

V. A Truce is likewise made to advance a Peace, and 'Tis true, the to treat it; and fuch was the Truce of the Hollanders pro- Swedes and the pounded at the Treaty of Munster, who refused absolutely other Confeto listen to any more than a Truce; and the reason that derates with they then gave was, that their Commonwealth was to be a Peace, and maintained by Arms, and that by admitting a Peace, the the Marquels same might be a means to reduce it to weakness, which Castle Roderigo would in the end tend to the destruction of that State; then offered a nay, they offered the Truce on Terms, that if * France Hollanders should enter thereinto, she should oblige her self upon any which they breach to reassume War, and that Treaty of Truce was might treat of continued, which not long after was converted into a at home.

perpetual Peace.

Again, Truces are fometimes promoted for the more France, fol. 28. honest discharge of a League, which is made with some other Prince, whom they have accustomed to comprehend therein: fo as a Peace following it, or a Truce not being accepted by him, they take occasion to leave the League, it being not his fault that leaves it, that the War was not ended.

Monmouth's History of

VI. And

Of Creaties of Ctuce and Reutrality.

VI. And although it feems that a Truce cannot by its *For the Right condition prejudice the pretention in the Principal; yet it remains with is most certain, that if he which is chased out of a contenhim, however tious State, confents that during the Truce the Commerce he hath loft the possession. Gro- Shall be forbidden to his Subjects, he doth wholly stop the gate, tius de Jur. Bell. as * Lewis the Twelfth did in the Truce which he made ac Pacis, lib. 2. with Gonfalve after the Conquest of the Realm of Nacap. 16. S. 18. ples.

2 H. S. cap. 6.

VII. In England by the Statute of 2 H. 5. cap. 6. Robbery, Spoiling, breaking of Truces and Safe-Conducts by any of the Kings Liege People and Subjects within England, Ireland, and Wales, or upon the main Sea, was adjudged and determined to be High Treason; but this branch concerning High Treason is repealed by the Statute

20 H.6. cap. 11. of 20 H. 6. cap. 11. But by the faid Att of 2 H. 5. for the better observation of Truces and Safe Conducts, Confervator Induciarum & salvorum Regis conductuum, was raifed and appointed in every Port of the Sea by Letters Pa-

Lords and Commons was pardoned, he making fatisfaction for the Parliam. tent. quinden. Hill. Vide Cotton Abridgment. 19 E. 4. 6. B. 20 H. 6. cap. 1.

† And at the

tents, his Office was to inquire of all offences done against request of the the Kings Truces and Safe-Conducts upon the main Sea (out of the Counties and out of the Liberties of Cinque Ports) as Admirals of custom were used to do. Sir John Trebiel was committed to the Tower for taking a French Ship, and being brought into Parliament, did there justifie loss. 11 H.4.ad the same; but at last confessed his fault, and begged the Kings Pardon +. Generally all Leagues and Safe-Conducts are, or ought to be of Record, that is, they ought to be Inrolled in the Chancery, to the end the Subject may know who are in Amity with the King, and who not; who be 18 H.6. cap. 4. Enemies, and can have no Action here, and who in League, and may have Actions personal here.

19 E. 4. 6. B.

Sometimes they have been inrolled in the Wardrobe, as

Maxime.

Note, In all Treaties, the power of the one party, and the other, ought to be equal; nor are they to be held firm till

being matters of State.

Rott. Scotia de An. 10 E. 3. puniendo illos qui contra for-

Before the Statute, when any breach of Truces or Leagues happened, or was occasioned by the misdeameanours m.36. intus, de of any of the King of Englands Subjects, there did usually issue forth Commissions under the Great Seal of England, mam Treugæ hominibus de Scotia concessæ deliquerint.

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VIII. Princes who neither love nor hate any thing absolutely, feem generally inclined to Neutrality, and in that govern themselves in their Friendships according to their Interests; and Reason of State, in effect is no other but Reason of Interest.

Neutrality may be of two forts; the one with Alliance with either part, the other without Alliance, or fo much as the least tye to the one or other, which is that which properly may be called Neutrality.

The first is governed by the Treaty of Neutrality, the latter by the Discretion of the Neuter Prince, whose carriage ought always to be fuch, as that he may not give the least glimpse of inclining more to one than to another.

IX. The advantages of Neutrality are, that the Nenter Prince or Republick is honoured and respected of both Parties, and by the fear of his declaring against one of them, he remains Arbitrator of others, and Master of himfelf.

And as a Neuter neither purchases Friends, nor frees himself from Enemies; so commonly he proves a prey to the Victor: hence it is held more advantage to bazard in a Conquest with a Companion, than to remain in a state wherein he is in all probability of being ruined by the one or the other.

But Princes that are powerful, have used generally to preserve a Neutrality; for whilst petty Princes and States ruine themselves by War, he fortifies himself with means, and in the end, may make himself Judge of their Differences.

On the other hand it hath been conceived, that Republicks that are weak, what part foever they take, it will be dangerous to them, especially if they are in the midit of two more powerful States than themselves; but experience hath made it appear to the contrary, that Neutrality is more beneficial to a weak Prince or Republick, so Muchpractifed that they that are at War be not barbarous or inhumane. by the Princes For although a Neutrality does not please either party, of the Empire vet in effect it wrongs no man; and as he doth not ferve, Stares. fo he does not hurt: besides, his declaration is referved till

Of Creaties of Cruce and Meutrality.

the iffue of the War, by which means he is not obliged, by fiding with either party, to gain or lose by the War.

X. But if the Neuter be prest by necessity to declare himself, he must do it for the most powerful of the two par. ties, following that Roman Maxim, That either they mult make themselves the strongest, or be a friend to the strongest.

* Anno 1674. Conful Quintus poni vos bello: imo nihil tam pe fine gratia, ne dignitate

So they of Strasburgh * declared for the Empire against the ad Acheos, quod French. On the other hand, if the Neuter fees, that joyn. optimum effe di- ing to the weaker, will balance the power of the stronger, cant non inter- and by this counterpoise reduce them to reason; the same hath been generally followed upon the Maxim, That the alienum rebus Safety of States consists chiefly in an equal counterpoise of the vestris est: Quip- one, and the other; for as the greatness and opulency of a Prince draws after it the ruine of their Neighbours, it is wisdom to premium victo- prevent it.

ris critis. Lucius lib. 35. Scripta Ammirat. disc. polit. l. 18. disc. polit.

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CHAP. X.

Of the Immunities and Priviledges of Ambal. ladors and other publick Binisters of State.

1. Of the Function of Ambassadours

and Agents generally confidered.

II. Of the difference between Ordinary and Extraordinary.

III. Of the Qualifications and matters requisite to be in such.

 Whether any but Soveraign Princes and States may qualifie such, and who may not.

V. Of the Right of Ambassadours, how secured by the Laws Divine

and of Nations.

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VI. Of precaution, whether the same may be given to such not to come, and attempting against such, bow to be dealt with, and of the punishment of those that shall violate them by the Laws of England.

VII. How Princes and States may govern themselves in reference to their reception or resusal.

VIII. Whether Ambalfadours may be fubjected to punishment when they offend against the Laws of Nations.

IX. Of proceeding against them by Princes and Republicks at this day according to the Laws of Nations.

X. Whether priviledged in that State or Country through which they paß without leave, and of the various proceedings against them by several Princes and States, illustrated in presidents and examples.

XI. Of proceeding against them according to the Laws of England.

XII. Where they forfeit their priviledge according to the Laws of England in things capital.

XIII. where preserved in matters ordinary not malum in se.

XIV. The Office of a publick Minifler, what it includes in matters Civil for the King and Nation whom they represent.

XV. Whether the House of an Ambaffadour can be a Sanctuary to offenders, or that he may exercise Royal furifdiction over his own Domeflicks and Vassals.

XVI. Whether the Goods of an Ambassadour are subject to seisure for debts contracted by bimself.

XVII. Outrages committed by Ambassadours, where a forseiture of their priviledge.

XVIII. Of punishment on those that shall offer violence to their per-

XIX. Observations touching the Immunities and Government of the publick Ministers of Venice.

XX. How introduced by the Laws

of Nations.

XXI. Wars whether just for violation done to publick Ministers.

I. A Nambassadour and Agent is the same thing, if we Coke 4. Instit.

Consider only the Function of their Charges: only fol. 153.

Agents are generally used when there is some suspicion that the Ambassadour will not be honoured as he should be; therefore the French Kings of late years have no Ambassadours in the Emperours Court, but Agents, because of the competition for precedence betwixt him and Spain.

in

in this they differ; an Agent hath charge to represent the Affairs only, but an Ambassadour ought to represent the Greatness of his Master, and of his Affairs.

II. Ambassadours are in two capacities, either Ordinary or Extraordinary: The ordinary or Lieger Ambassadours are those who are commanded to reside in the place whither sent, unless they receive Letters of Revocation; and as the time of their return is indefinite, so their business is uncertain, arising out of emergent occasions, and commonly the protection and affairs of the Merchants is their greatest care. The Extraordinary or pro tempore are those that are imployed upon some particular great Affairs, or Condolements or Congratulations, or for Overtures of Marriage, &c. Their Equipage is generally very magnificent and illustrious, and they may return without requesting of leave, unless there be a restraining Clause in their Commission.

III. An Ambassadour or Agent ought to be conversant in all forts of History, reading with judgment and weighing all the circumstances of action which are there reprefented, by which he will be qualified to know (but especially of that Country whither he is sent)

- 1. The Establishment of Estates.
- 2. The Rights of Limits.
- 3. The Genealogies of Princes.
- 4. The Pretentions of Kings upon the Estates of others.
- 5. Their Forces, Means, Alliances, and manner of living.

Personally he must be

- Resolute and couragious in that which he hath wisely deliberated.
- 2. Secret in Affairs of Importance.
- 3. Discreet in his Speech.
- 4. No Detractor or Speaker evil of any King or State, but more especially of him or them with whom he remains.
- One that will fpeak freely of his Masters Pretensions, if there be a question to maintain them.

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IV. By the Laws of Nations none under the degree of The Trumpea Soveraign Prince can nominate or fend any in that quater that lity; nor can any Subject fend or receive any Ambassa- brought the dour, be he never fo great; if a Viceroy doth it, it is no Letter from less than High Treason: and so it was declared when the the Maid of Scots, inconsulto Principe, sent Lowden and others in qua- Critans to the lity of private clancular Commissioners to treat with the was burnt, and French King Lewis the Thirteenth in the name of the whole the reason of Nation for affistance, the King would not admit or hear that was, bethem. So did Queen Elizabeth when Christopher Assonville cause he came came into England in quality of a Minister of State, fent Frince, nor one from the Duke of Alva then Governour of Flanders, fine Commissionarefused to admit him, he not having any Commission or ted, or capable Credentials from the King of Spain. 'Tis true the Electors of fending a and Princes of Germany have obtained the Priviledge of Trumpeter. fending and the Reception of Ambassadours, * but that is story of France, limited only to matters touching their own Territories, fol. 326. and not the state of the Empire; and so likewise the Hans * That the Ger-Towns may do the same, for they claim the like privi. Man Princes ledge, they being free Imperial Cities, and partake of may have such the fame Regalia's either by Prescription or by Grants but it is secure. from former Emperours, whose necessities enforced them dario tanta jure. to part with such Royal flowers of the Empire; and gene: Et qui jus mitrally they + fend for their Ambassadours always two per-tendora Legatosons, one of great Birth, and that hath been a Souldier rum secundario to maintain decency, and the other a Doctor or Lawyer bent, mittuntur to regulate Affairs with Learning and by the Pen.

Legati non de Rebus universum concernentibus Imperium, sed tantum sui Territorii ratione; eo enim ipsis intuitu tantum datum, ultra igitur terminos non est procedendum, sieret enim alias prajudicium Imperatori, oc. Kirknerus 5. 25. Memorable was that of the Switzers, who feat a Melfage to the French King that he should not send them an Ambassadour with store of words, but #

V. The right of Ambassadours is secured both by the afeguard of men, and also by the protection of the Law Divine; therefore to violate this is not only unjust, but impious too: and as Protection is given to the Legate's of Pompon. Leg. fi Supreme Rulers by the Laws of Nations; fo by the Civil quis. D. de Li-Law there is a protection likewise for Provintial Legates, Eationibus. Heralds, and Confuls. This Right of Legation was originally provided, faith Livy, for a Foreigner, not a Liv. lib. 16. Citizen; yet in Civil Wars, necessity sometimes makes

Treasurer with plenty of thoney. + Monmouths History of France, fol. 27, 28.

ties, lose the

Of Amballabours.

place for this right besides the Rule, as when the People are so divided into equal parts, that it is doubtful on which fide the right of Empire lyeth, as that unhappy fpot of Flanders, or when the right being much controverted, two contend for the succession to the Throne; for in this red in a folemn case one Nation is reckoned as two, and so was the State of War, and de. England, when the House of York and Lancaster contend. prived of their ed for the Crown, properly then called Commissioners; nay Kingdom with this right of Legation hath been so preserved, that the very other Royal-Messengers of Rebels have been protected, as were those of Holland by Philip of Spain. So great a respect have Nations right of Legation. P. Ami- had in all times to fuch men, that even * Traitors, nay Pi lins detained rates and Robbers, who make not a Society, nor have any

he conquered. *C. Poole a ing given them, obtain the right of Legation, as once the Trainor fled to Fugitives in the Pyrenean Forest did.

Rome, the Pope fent him Ambassadour to the French King, of whom the King of England demands his Subject, sed non prævaluit. Coke Instit. 3. fol. 153.

the Heralds of Protection by the Law of Nations, and with whom neither Perseus, whom Faith nor Oath (as some conceive) may be kept, Faith be

> VI. Ambassadours may by a precaution be warned not to come; if they dare, they shall be taken for Enemies; but once admitted even with Enemies in Arms, much more with Enemies not in actual Hostility, have the protection and fafeguard of the Laws of Nations; and there fore their Quality being admitted by Safe-conduct, they are to be preserved as Princes; and so it was declared in Parliament, where the killing of John Imperial, Amballadour from the States of Genea, was High Treason, Crima

lesa Majestatis. + Legatus eins @ Legatos vio-

Kot. Pat. 3 R.2.

nam. 18.

† So likewise of A. de Walton, the Kings Ambassadour, vice sungitur d Nuncium Domini Regis missum ad mandatum Regis exequen-& honorandus dum, who was murdered by one John Hill, which offence oft ficut ille cu- was adjudged High Treason, and accordingly he was sus vicem gerit, drawn, hang'd, and beheaded.

l'are, contra jus Gentium est. 22. Assize pl. 49. Note, this was three years before the making of the Statute of 23 E. 3. quere if such a Prorex is within the Statute at this day.

Qui violarit Legatum, Lege Julia de vi publica tenetur.

And by the Julian Law, he that violates Ambassadours is guilty of publick violence, that is, of prostituted Faith of publick Authority, and of a breach of the Laws of Na-

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tions: and by the Pontifical Law it is no less than a Piacle. People and to be interdicted from the benefit of holy things. which Philomela fung a fatal Requiem for the bloody entertainment which she gave the Ambassadours of Frederick Barbaroffa, the Emperour having fent them to treat in order to Peace; but they instead of that avowed the action of those that murdered his Ambassadours: The offended Fullers Holy Emperour having taken the City, razed it to the ground, War, 1.3.64.

and executed all the people therein as Rebels and Traitors against the Laws of Nations.

VII. On the other hand, Ambassadours may not always be received, though always they ought not to be rejected without cause; for there may be cause from him from whom they come, as the Roman Senate would not admit of the Ambassage of the Carthaginian, whose Army was then in Italy; the King of Spain, those of Holland, and the then Pope, the Ambassadour of Henry the Second after the Murder of Becket Archbishop of Canterbury: so like- Daniels History wife from the very persons that are sent, as Theodorus the of Henry 2. Atheist, whom Lysimachus would not give Audience to, Imper. Gallie, and Mr. Oliver, Lewis the Eleventh's Barber, whom they Venetorum, & ed not of Gaunt refused: Yet Matheus Palmerius, an Apothecary Florentinorum of Florence, had better Fortune than the French Barber; ad bellum fibi for he being sent in Quality of Ambassadour to Alphonso indicendum King of Naples, and having acquitted himself elegantly, justic in locum and with much Generolity at his first Audience, the King qui à comstatu having information that he was an Apothecary, faid, Se fuo abeffet, tritali sono gli speciali di Fierenze, quali debbono essere gli Me- ginta milliar. tali Jono gli speciali ai Fierenze, quais ucoono cipo gli special Guic.l.18.
dici? If the Apothecaries of Florence are such, what shall we Bellaius l. 3. think of their Physicians?

So likewise where the cause of sending is suspected, in reference to disturb the People, or with intentions rather to fow Sedition, than to conclude a Peace (if fuch be their Errand) or not honourable, or unfeafonable. As for those As my Lord assiduous Legations which are now in use, they may with Bacon observes very good right be rejected; for the no-necessity of them in the Life of appears by the ancient Custom whereto they are unknown, that Princes

which made Henry the Seventh admit of none. The Venetian having admitted Henry the Fourth of * Card. Arnold. France his Ambassadour, yet they interdicted him to offat in his

come with the other Ambassadours to the Chapit, till the cake 4 Milit King was reconciled to the Church of Rome.

VIII. By

Cambden 1571. qualt. ibi propo-Carolus quintus

fol. 1 52.

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Menander Protector Fuftino Imper. Avarorum Legatos contra jus Legationim in vinculis habuit, Cothmann. Coke Inflit. 4. cap. II. co effent, jus tamen Gentium valuit. quam ex jure Gent. Bomilcar comes ei publica venerat.

VIII. By the Laws of Nations, only unjust force is kept from the Bodies of Ambassadours; for if the Laws of Na. tions be broken by him, he is subject to punishment: yet the opinion of Nations and Men Eminent for Wildom, have been doubtful in this point, and Presidents on both fides have been avouched; One which feeins to refute that position of punishing such Ministers of State: The Ambaffadours of Tarquin, who had committed Treason at Resp. 32. n. 29. Rome, and as * Livy observes, were in the State of Ene. mies; yet the Right of Nations (as he calls it) prevailed fo cap.6. 20 H. 6. far as to preserve them, though in a case of Hostility. On the other hand, + Salust observes, that Bomilear, one of *Quanquam vi- the Carthaginian Ambassadours, who came to Rome on the si sunt commissi- Publick Faith, was adjudged guilty, rather (saith he) by the se ut hostium lo- Rules of Equity, than by the Laws of Nations: Equity, that is the meer Law of Nature, suffers punishment to be exact. ed where there is found a Delinquent, but the Laws of Fit reus magis Nations except the Persons of Ambassadours; for certainly ex equo bonoque their fecurity out-weighs the profit arising from punishment, which may be inflicted by him that hath fent him (if he be willing) if unwilling, it may be exacted of him as an qui Romam fide approver of the crime.

An Enemy is bound to whom they are fent, but their Priviledge obliges not those through whose bounds they pass without leave; for if they go to, or come from their Enemies, or make any hostile attempt, they may be slain. Liv. lib. 26.

Grotius de Fure Belli ac Pacis, 1.2. 6.18. 5.4. 4,005. Senatus faciem Secum attulerat auctoritatem Reip. M. Tull.8.

Coke Inflit. 4. jol. 152.

IX. Again, as Ambassadours are not to render a reason of their actions to any other, but to him by whom they are fent; fo it is impossible, by reason of various Interest and other Secrets of State, which pass through their hands, but somewhat may be said, which bears a show or face of crime; (which perhaps may prove otherwise) yet the examining and tracing of the truth may be of a dangerous consequence; and therefore if the offence be fuch as may be contemned, it is usually to be diffembled or connived at, or elfe the Ambassadour be commanded to depart the Realm; and if the crime be cruel, and publickly mischievous, the Ambassador may be sent home with Letters of Request to his Master to inflict punishment according to the offence: So likewise in the precaution of a great mischief, especially publick, (if there be no is kept other remedy) Ambassadours may be apprehended and executed; and if they oppose by force of Arms, they quentus Mediolaof Na. nt: yet may be flain. Visidom, ti sui imperavit, ne à Comitatu suo abscederet, Guicciard, in ditt. jam loc. Vide Cambdens on both Eliz. Anno 1571, 1584.

Sic Carolus nensis ut subdi-

In the Bishop of Rosses Case, An. 13 Eliz. the question Hill. 13 Eliz. was, An Legatus qui rebellionem contra Principem ad quem Bishop of Rosses legatus concitat, Legati privilegiis gaudeat, & non ut hostis Case. Co.4 Inft. penis subjaceat; and it was resolved, That he had lost the fol. 152. Priviledge of an Ambassadour, and was subject to punishment; nor can Ambassadours be defended by the Law of Nations, when they commit any thing against the State

or Person of the Prince with whom they relide.

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) by the X. And why Ambassadours are in safety in their Enemies Countries, and are to be spared when they commit offences, is not so much for their own or Masters sake, but because without them there will never be an end of Hostility, nor Peace after War: neither is the Name or Person of an Ambassadour so inviolable, either in Peace or in time of War, but there may be both a convenient time and a good occasion to punish them, and this standing with the Laws of Nations, as may appear by these following Examples.

> I. The Law does not pertain to them through whose Thucyd. lib. 2. bounds Ambassadours pass without leave; for if they Appian. de Bello go to their Enemies, or come from their Enemies, or Siculi Athenimake any hostile attempt, they may be sain : So the Athe- ensum Socii mians did to the Ambassadours between the Persians and Legatos Syracu-Spartans, the Illyrians to the Ambassadours between the sanorum misses Eseans and Romans.

> 2. The Emperour Charles the Fifth, advertised of the cyd, lib. 2. League made against him, would not dismiss the Ambaf De Gallorum sadours of France, England and Venice, till his own were ad Turcam legain fafety, but he fet Guards upon those of France, Venice, tis, quos in Pado and Florence, causing them to be conducted thirty miles occiderant, vide from his Court, with a Prohibition not to speak to them, Judicia Peruta, nor for them to write. As to him of Milan, as his Subject, lib. 11. he was enjoyned not to part from Court; but as for him Cambden Elize of England there was no alteration.

> 3. The Venetians having destroyed some of the Cor- History of the faires, Amurath commanded Luigi Contarini, then Bailio of Republick of Venice, foi-450,

Venice, to be imprisoned. I 3

ad Civitates alias cepere. Thu-

4. The 451.

Of Ambadadours.

4. The Signiory of Venice understanding that certain Traitors, who had revealed their Secrets to the Turk, were sted for protection into the House of the French Ambassadour at Venice, sent Officers to search the Ambassadour's House; but the Ambassadour refusing them entrance, the Senate commanded certain Cannon to be brought out of the Arsenal to beat down his House, which when he saw planted, he surrendred up the Traitors.

5. The Ambassadours of Tarquin, Morte affligendos Romani non judicarunt, & quanquam visi sunt ut hostium loco

esfent, jus tamen Gentium valuit.

August. de Leg. Antiq. Rom. 6. The State of Rome, though in case of most capital Crimes, exempted the Tribunes of the People from question during the Year of Office.

Asta Trident. Concilii. 7. The Ambassadours of the Protestants at the Council of Trent, divulging there the Dostrine of the Church, contrary to a Decree there, whereby it was enacted a crime equivalent to Treason, yet stood they protected from any punishment.

Pompon. Leg. ult. D. de Legazis. It is generally consented by all the Givilians, That Legis de jure Gentium indictum est, & corum corpora salva sint, propter necessitatem Legationis, as ne consundant jura commercis inter Principes.

8. Viva, the Popes Legate, was restrained by Hemy the Second for exercising a Power within his Realm, not allowed or admitted of by the King, in disquiet of the menedist. in Vi- State, and forced to swear not to act any thing in prajudi

ta Hen. 2. cium Regis vel Regni.

On the other hand, it hath been answered, That they are by the Laws of Nations exempted from Regal Tryal, all actions of one so qualified, being made the acts of his Master, or of those whom he represents, until he or they disadvow; and injuries of one Absolute Prince or State to another is factum hostilitatis, and not Treason; the immunity of whom Civilians collect as they do the rest of their grounds from the practice of the Roman State, deducing their arguments from these examples.

Colloquium Machiav.l.2.c.28.

9. The Fabis Ambassadours from Rame were returned fafe from the Chades, with demand of Justice against them only, although they had been taken bearing Arms with the Errurians their Enemies.

Liv. 2. Dec.

10. King Edward the Second of England, fent amongst others

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others a French Gentleman Ambassadour into France; the Sir Robert Cotcertain King upon this arraigned him as a Traitor, for ferving the tons Posthamus. King of England as Ambassadour, who was his Enemy (but the Queen procured his pardon.)

11. Henry the Third did the like to one of the Popes Ambassadours, his Collegue slying the Realm secretly, fearing timens pelli sui, as the Records have it. Edward the Rott. Scaccar. First restrained another of the Popes turbulent Ambassa- westmin. Claus. dours, till he had (as his Progenitors had) informed the Edw. primi. Pope of the fault of his Minister, and received satisfaction for the wrongs.

12. Henry the Eighth commanded a French Ambassadour to depart presently out of the Realm, because he

was the professed Enemy of the Seat of Rome.

13. Lewis de Prat, Ambassadour for Charles the Fifth, Lord Herberts was commanded to his House, for accusing falfly Cardinal History Vite Wolsey to have practised a breach between Henry the Hen. 8. Anno Eighth and his Master, to make up the amity with the 1523. French King.

14. Sir Michael Throgmorton by Charles the Ninth of France was fo ferved, for being too busie with the Prince

of Conde's Faction.

15. The Popes Ambassadour at Paris was arraigned for practifing certain Treasons in France against the King in the Parliament of Paris, and was there found guilty and committed to Prison.

16. Doctor Man then Ambassadour was taken from cambdens Hihis house at Madrid in Spain, and put under a Guard to a story Vita Q. straiter Lodging for breeding a scandal (as the Conde Teri Eliz. An. 1567. faid) in using by Warrant of his place, the Religion of his Country, although he alledged the like permitted to Guzman de Silva their Ambassadour in England, and to the Turk no less then in Spain.

17. Francis the First, King of France, fent Cafar Tre- Guiccard, liv. golus and Anthony Rincone, Ambassadours to the Turk, they 18. were furprised by the Armies of Charles the Fifth on the River Po in Italy, and were put to death; the French King complained that they were wrongfully murdered, but the Emperour justified their death; for that the one was a Genois, and the other a Milanois, and his Subjects feared not

to serve the King his Enemy.

Lord Herberts Hiftory of H.8.

18. Henry the Eighth being in League with the French, and at enmity with the Pope, who was in League with the French King, and who had fent Cardinal Pool to the French King, of whom King Henry demanded the Cardinal, being his Subject, and attainted of Treason, sed non

pravaluit.

19. Samuel Pelagii, a Subject to the King of Morocco, pretended that he was an Ambassadour sent unto the States General of the United Provinces; he came to them, and accordingly they treated with him, afterwards he departed; and being upon the Sea, he there took and spoiled a Spanish Ship; and then came into England; the Spanish Ambassadour here having received intelligence of the spoliation caused his Person to be seized upon, intending to proceed against him as a Pirate, and imprisoned him, and upon conference with the Lord Coke, Dordridge, and other Judges and Civilians, they declared their opinions, That the Caption of the Spaniards Goods by the Morocco Ambassadour, is not in Judgment of Law a Piracy, in regard it was apparent that the King of Spain and the King of Merocco are enemies, and the same was done in open Hostility; and therefore in Judgment of Law could not be called Spoliatio, sed legalis Captio; and a Case out of 2 R. 3. fol. 2. was vouched, where a Spanish Merchant before the King and his Council, in Gamera Scaccarii, brought a Bill against divers English-Men, therein setting forth quod depredatus & spoliatus fuit upon the Sea, juxta partes Britannia, per quendam Virum bellicosum de Britannia de quadam Navi, and of divers Merchandises therein, which were brought into England, and came into the hands of divers English-Men, naming them, and so had process against them, who came in, and pleaded, That in regard this depredation was done by a Stranger, and not by the Subjects of the King, therefore they ought not to be punished; in regard that the Statute of 31 H.6. Cap. 4. gives relititution by the Chancellor, in Cancellaria fibi vocato uno Judice, de uno Banco vel altero; and by the Statute of 27 Ed. 3. Cap. 13. that the restitution may be made in such a case upon proof made, by the (hancellor himfelf without any Judge; and upon that Cafe it was resolved, Quod quisquis extraneus, &c, who brings his Bill upon this Statute to have restitution, debet probare 18 . Calle se is a constant do la constant

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quod tempore captionis fuit de amicitia Domini Regis; and also quod ipse qui eum ceperit & spollavit, fuit etiam sub obedientia Regis, vel de amicitia Domini Regis, sive Principis querenis tempore spoliationis, & non inimicus Domini Regis sive Principis querentis, quia si fuerit inimicus, & sic ceperit bona, tunc non fuit spoliatio, nec depradatio, sed legalis captio, prout quilibet inimicus capit super unum & alterum : the Judgment of which Cafe was held to be Law, and thereupon the Judges Bullired 3. part. delivered their opinions, that the Morocco Ambassadour fol. 28. cited in could not be proceeded against as a Pirate.

Marshes Case.

20. In the time of Philip the Second of Spain, the Venetian Ambassadour in Madrid protecting one Bodovario, a Venetian, an offender, that fled into his house, and denying the Corigidor or Justice to enter his house, where the Ambassadour stood armed to withstand them; upon complaint made, the Ambassadour was removed unto another house, till they had searched and found the offender; then conducting back the Ambassadour with all due respect, a Guard was set upon his house to stay the fury of the enraged people; the Ambassadour complaining to the King, he remitted it to the Supreme Council: they justified the proceedings, condemning Bodovario to lose his head, and other the Amballadours Servants to the Gallies. all which the King turned to Banishment; and to satisfie the most Serene Republick, fent the whole process to Inego de Mendoza his Ambassadour at Venice, declaring by a publick Ordinance unto that State, and all other Princes, That in case his Ambassadours should commit any offence unworthily, and disagreeing to their qualities and professions of Ambassadours, they should not enjoy the Priviledge of those Sir Hen. Wootons Officers, but he would refer tham to be judged by the Laws of State of Chrithat Prince or State where they then resided, and where they had injured. It was a great and a noble Saying.

21. In the Year 1568. Don Guhernon d'Espes was orde- Vide Sir Robert red to keep his house in London, for sending scandalous cottons posthum. Letters to the Duke de Alva unsealed, and in 1586. Don and the Propo-Bernardino de Mendoza, was restrained first, and after James. commanded away.

XI. The manner of proceeding against them, according to the practice in England, hath been conceived necessary to be, that some of the Chief Secretaries of State were fent to the Ambassadours, and by way of advice,

fitton to King

that understanding that the Common People having received notice of, &c. "And that they cannot but con-"ceive a just fear of uncivil carriage towards their Ex-" cellencies or their Followers, if any the least incitement " should arise, and therefore for quiet of the State, and "fecuring of their Persons, they were bound in love and " respect to their Excellencies to restrain as well themselves "as Followers, till a further course be taken by legal exa-" mination, where the afpersion began, the same being " in their opinions the best and the only way to prevent " the danger, &c.

Sometimes, if the Parliament be litting, the King acquaints the Lords, and then departs; who having had Conference with the Commons, conclude of a Message to be fent to the Ambassadours, (either by requiring an account of the matter or confining of them) the persons to be sent, the two Speakers of both Houses, with some convenient number of either, having their Maces, or Enfigns of Offices born before them to the Ambassadours Gates, and then forborn; and then requesting speech with them, let them know that a relation being made that day in open Parliament of, &c. they were deputed from both Houses, the Great Council of the Kingdom, to the which by the Fundamental Laws of this Nation, the chief care of the Kings fafety, and the publick peace and quiet of the Realm is committed; and that they were no less the High Court of Justice, or Supersedeas to all others, for the examining and punishing all attempts of so high a nature, &c. if it carry truth; and having executed their Commission, conclude that the Houses, to shew that reverence which they bear unto the dignity of his Master by their Message, declare that they two are never imployed but to the King alone, were at that time fent, &c. and if the Houses shall upon return of their Speakers conceive their answers (if it be a matter that requires it) are such as may justly deserve their be-The Parliament ing confined, they then make an address to his Majesty to

not fitting, the confine them to their Houses, restraining their departure Secretaries of State may fignifie the like, if occasion, &c. the Popes Legates in England, and 28 E. 1.

XII, If a Foreign Ambassadour, being a Prorex, commits here any Crime which is contra Jus Gentium, as Tres

till the Prince or State, whom they represent, be acquaint-

ed with their offence: And so it was done in 44 H. 3. 80

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fon, Felony, Adultery, or any other crime which is against the Law of Nations, he loseth the priviledge and dignity of The opinion of an Ambassadour, as unworthy of so high a place, and may the Lord coke be punished here as any other private Alien, and not to be 4. Instit. fol. remanded to his Soveraign but of courtelie.

XIII. But if any thing be malum prohibitum by any Act of Parliament, private Law, or Custom of this Realm, which is not malum in fe Jure Gentium, nor contra Jus Gentium, an Ambassadour residing here, shall not be bound by any of them; but otherwise it is of the Subjects of either Kingdom; for if a French Merchant or Spanish Merchant trades or imports any prohibited Goods, he must at his peril observe the Laws of England; and so it was adjudged Pafc. 33 Eliz. in the Exchequer, Tomlinson, qui tam versus Henry de Vale & al. upon the Statute of 19 H. 7. Cap. 21. but if an Ambassadour imports any prohibited Goods, è contra.

The Florentines having fent Ambassadours to Charles the Fifth and Clement the Seventh, being then at Bolonia, together with their Houshold-stuff, they brought covertly many rich Commodities to fell and traffick with, suppofing that they might be free from paying the Gabel; but the Searchers of the Custom-house having discovered it, Jovins fo. 125. they became objects of laughter and mirth to the Bolonians, and for that, as unworthy of the Office of Ambaffadours, were remanded home without Audience.

Sir Thomas Challoner having been fent Ambassadour to Spain by Queen Elizabeth', remitted a Complaint to the Queen, that his Chests had been searched: upon which the Queen demanded the opinion of her Council in the point, who upon the whole matter resolved the action into this, Legato omnia aqui bonique ferenda dummodo Principis Honor non directe violetur, the very words of Mr. Cambden, An Ambassadour must bear all things patiently, provided that the Honour of the Prince (whom he ferves) be not directly violated.

XIV. The Office of an Ambaffadour does not include a Leg. G. F. de Leprotection private but publick, for the King his Master, ga. in aut. de nor for any feveral Subject otherwise than as it concerns fandliff. 5-rethe King and his publick Ministers, to protect them, and procure their protection in Foreign Kingdoms, in the nature of an Office and Negotiation of State; therefore their

Quality

Lord Hobart,

fel. 71.

Quality is to Mediate and profecute for them or any one of them, at the Council-table, which is as it were a Court of State; but when they come to fetled Courts, which do and must observe essential forms of proceedings, scil. proceffus legitimos, they must be governed by them: and therefore in the Case of Don Diego Serviento de Acuna, Ambassadour Leiger for the King of Spain, who libelled in the Admiral Court as Procurator General for all his Masters Subjects, against one Jolliff and Tucker, and Sir Richard Bingley, for two Ships and their lading of divers kinds, of the Goods of the Subjects of the King of Spain generally, and not naming of them adduct ad Port de Munster, in the Preface of the Libel generally against them all, and then proceeds and charges them feverally thus; That Folliff and Tucker Captain Pirate, in alto Mari bellice dictas Naves aggressi sunt, & per vim & violentiam took them, and that they were adducte in partes Hibernie, and that coming into the hands of Sir Richard Bingley, he converted them to his own use, (not faying where) and refusing to render them being required, it was there held that a Prohibition should go, for the matter is tryable meerly at the Common Law, and that fuch a Procuration was not good, though to an Ambassadour.

Don Alfonso de Valesce Ambassadour from the Catholick King, attached Tabacoes at Land here, which one Corvero, a Subject to the King of Spain, brought hither, and the Ambassadour by his Libel supposed to belong to his Master, as Goods confiscated, as all other his Goods were. Sir John Watts the Plaintiff in the fuggestion, prayed a Prohibition, which was granted accordingly, for the property of Goods here at land must be tryed by the Common Law, however the property be guided; and it was likewife rul'd, that if any Subject of a Foreign Prince bring Goods into this Kingdom, though they were confiscate before, the property shall not be questioned but at the Common Law. Don Alfonfo, verf. Corvero, Mich. offac. Hob. 212. Hill. 9 Fac. upon the like Libel by Don Pedro

me bac in re eundem, lib. 11.

XV. Whether an Ambassadour hath Jurisdiction over * Diffingui fer his own Family, and whether his House be a Sanctuary* folent crimina. Vide Parutam, lib. 10. ubi Rex Gallia hanc ob caufam iratus pacatur. Vide

Surega Ambassadour for Spain.

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for all that fly into it, depends upon the concession of him with whom he resides, for this belongs not to the Law of Nations +; and it hath been feen that an Ambaf. + Grot. de Ture fadour hath inflicted punishment on his own Servants and Belli ac Pacis, Vassals, as the Moscovite did here in England, but that lib. 18. 5. 4. must be purely by concession, as the Turk permits it to 5, 6, 7. the English Ambassadour at Constantinople: But for Fugitives that fly into their Houses, nay, their own Servants, if they have greatly offended, cannot be drawn out by force, without a demand and refusal; which then done, it is then become as an offence in them.

XVI. Most certain by the Givil Law, the moveable Rex facifie metu Goods of an Ambassadour, which are accounted an ac- regium nuntium cession to his Person, cannot be seized on, neither as a populi Romani pledge, nor for payment of a debt, nor by Order or Exe. Quiritum vasa cution of Judgment, no nor by the King or States leave comites; mess: where he resides (as some conceive) for all coaction ought were menthath been to be far from an Ambassadour, as well that which touch- brought and eth his necessaries as his Person, that he may have full se- left at the curity; if therefore he hath contracted any debt, he is to house of the be called upon kindly, and if he refuses, then Letters of Ambassadour, Request are to go to his Master*; so that at last that lowed good, course may be taken with him as with Debtors in ano- and conceived ther Territory; to some this may seem hard, yet Kings, no breach of who cannot be compelled, want not Creditors; but the their privi-Lord Coke feems to be of another opinion +, for as to Cafe of Mon-Contracts and Debts that be good Jure Gentium, he must fier Colbert for answer here.

York-House, Mich. 28 Car. 2.

in Banc. Reg: * Grotius de Jure Belli ac Pacis, lib. 2. cap. 18. † Coke 4. Inflit. fol. 153. Certain it is that none dareth presume to meddle either with their Persons, Goods, or Servants without leave had, the contempt of which hath been punished with imprison-

XVII. If an Ambassadour commits any private outrage against one of the Princes Subjects, with whom he resides, unless it be to defend the Dignity of his Charge, or of his Master, it hath been conceived by some not to be justifiable before the Prince with whom he resides; for (say they) there is a great difference between the Dignity, and Authority of the Prince in the Country of another Sovetaign, for he may well retain his Dignity, but not his Authority. Usually injuries of that nature being done, they have

Df Ambattabours.

have admitted debates at a Council of State, where the Soveraign, with whom the Minister of State hath resided, being satisfied, that reparation ought to be made to the party injured, he hath been ordered or at least requested,

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to comply with the same.

XVIII. But on the other hand, if any private outrage be committed by the Subjects of that Prince with whom he resides, upon his Person, the offenders may be subjected The Queen of Sweden having made the to punishment. Incomparable Grotus (after he had escaped by Providence out of Prison, and by a greater from his Country-men) her Ambassadour with Lewis the Thirteenth, with whom he refided at Paris, coming one day from St. Germans, the Secretary of Ceremonies being in the Coach with him, it chanced that in one place as they passed, a great number of people were in the way feeing of an Execution, his Postillion and Coach-man driving boldly through the company, the Archers then attending the Execution with fhort Pieces, (concerned somewhat angerly that the Execution was disturbed) made after the Coach, shot his Postillion and Coach-man, and through the Coach, even through his Hat: the matter coming to be examined, the King ordered three or four of them to be hang'd, but that Good Man first pardoned them himself, and then obtained the King's.

XIX. The Republick of Venice imployeth generally more Ambassadours abroad than any other State, and they are as those of other Princes be, Ordinary and Extraordinary; the Commission of the Ordinary continueth for three years, but he who resides at Constantinople is not called Ambassadour, but Bailio, residing there perpetually; and that Republick allows him a greater provision to support his Grandeur, than to any other, and by the Laws of Venice whatsoever he expends is allowed him upon his accounts without any examination; to which no other of their publick Ministers of State have like priviledge.

Ambassadour imployed, imless they have been Ambassadours formerly, and upon their return are strictly examined of their comportment in their Legation, and are to discover what Presents they have received from the Prince or State to whom they were sent the concealment of which is of a dangerous consequence.

Bark seate in memor. Grotii.

Bodinus de Repub. lib. 3. re the esided, to the uested,

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Nor may any of their Ambassadours receive any preferment from any other State during their Legation. The Fac. Aug. Thua-Patriarch of Aquileia dying, Hermolao Barbaro being there nus,1.27. in Vi-Ambassadour for that Republick, the Pope conferred on ta Augustini him that Ecclesiastical Dignity, and made him a Cardinal; of Venice, An. which being known at Venice, notwithstanding he was a 1486. Person of great Merit, and had given notice to the Senate, rich, well allied, and had good Friends, they fent express command that he should refign the Patriarch ship, otherwife they would take from his Father the Procurator (hip of St. Mark, and confifcate all his Estate.

But if fuch Ambassadours have received any Present. Gift, or Reward from any Foreign Prince or Republick, and fuch Ministers of State are thought worthy of retain- Paulus Parinta ing the same, such a Grace must pass by the Suffrage of in Hist. Ven. the Senate, to oblige them more to the benevolence of lib. 7. the Republick, than to the bounty of any Foreign Prince. The confideration of which put the same generous scruple into the breast of Sir Amias Paulet, who returning from his Embassy in France, would not at his departure receive Francis Hottofrom the French King the Chain of Gold which is given of man, fol. 23, 24. course, till he was half a League out of Paris. But more famous was the late action of Sir Leolin Tenkins, His Majesties Ambassadour at Nimeguen, who though after the Treaty concluded, absolutely refused the French Kings Prefent.

XX. By the Laws of Nations, in the Reception of Ambassadours, those from a King are generally introduced by an Earl or Count, these from a Duke or Republick by a Baron; nor are they to be allowed that Honour but only at their first and last Audience.

XXI. Prophane Histories are full of Wars because of * Grot. de Twe wrong done to Ambassadours; and in the Sacred Story is Belli ac Pacis, extant the memory of the War which David upon that 1,2.6.18. S.11. ground waged against the Ammonites: nor doth Cicero † Montague Biesteem any cause more just against Mithridates; and at this wichs Asts and day not only Lawyers*, but Divines † are all of the same Monuments of opinion, That a War cannot be more justly commenced the Church, than for the violation done to their Publick Ministers.

fol. 450.

CHAP. XI.

Df the Right of belibering Perlons fled for Protection.

I. Where Superiours may become culpable for the crimes of their Sub-1ects.

II. Offences by whom properly punished , whether by the injured State, or they into whose Territory the offender is fled.

III. Whether Kingdoms and States ought to deliver up Fugitives, if required, or not.

IV. Where persons are fled, the places whither they come ought to be Afy-

V. How distinguished, and when to be punished or delivered.

VI. Whether an innocent man may be deserted and delivered up to the enraged Power that demands him. VII. Whether an innocent person may be deserted and vielded, if War be threatned.

VIII. Whether an innocent person refused to be delivered up, ought to vield himself.

IX. If Charity in an innocent to yield himself, whether compassion may be used if he resuses.

X. Whether this of delivering up does extend to Soveraign Princes driven out of the Country.

XI. Persons running away with the Publick Revenue, where their perfons and Goods have been feized till reparation and satisfaction be made.

Zeno interceding for the the Legates with him befought them with tears; ne unius amentiam civitati affignavent, suo

I. TAthers are not bound for the fault of their Children. nor Masters for those of their Servants; nor Prin-Quintus, and ces for the actions of their Subjects, unless they become partakers in the crimes; the which may be done in two respects, by sufferance and receipt; therefore if Princes shall suffer or countenance their Subjects, by Pictures or Libels, or otherwise to abuse another Nation or Commonwealth, it is the same as if they should authorize it. Brutus to Cicero, How can you make me guilty? Yes, well enough, if quemas periculo it were in you to hinder it; but receipt may admit of some facere. Liv.l.40. further ferutiny.

II. Commonwealths being instituted, it was agreed that faults of particulars, which do properly belong to their own fociety, should be left to themselves and their Soveraigns, to be punished or connived at, as they judged most fit.

Yet that Right is not fo absolutely left to them, but offences; which tend to the destruction of Society or Government.

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Of Protection by the Laws of Mations.

vernment, whereof Treason is the chiefest, may seem to be excepted; for if a Subject shall commit an act tending to the subversion of his Soveraign's Government. the same is an offence that's subject to an universal punishment, i.e. it is to be punished every where, and the Governours into whose Territory such fly, seem to have a Right of profecuting for the offence: in Civil actions. which tend to Commerce that supports Society, the Subiects of Foreign Nations having justly contracted debts in their own Country, may obtain Justice in another; by a 5 Jac. in B. R. fronger reason it is thought that Princes or Republicks ment, fol. 530 that have received publick injuries, have right to require weyers Cafe, punishment for the indignity that is offered them, at least for that which tended to the subversion of their Governments, and to have the offenders delivered up.

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III. The question is illustrious, opinions grounded on feveral great Presidents have been both ways produced: it hath been generally held, That those Kingdoms where For the know. the offenders are fled, ought to do one of the two, either ledge of the punish them according to their deserts being called upon, or leave cause ought to punish them according to their aejerts very cauca apon, the precede the them to the Judgment of the offended State; others on the decition; not contrary : most certain it is by the delivering up is under- decet homines flood, to leave him to the legal Judgment of that Prince dedere causa non or State, whom he hath offended: And fuch was the De. cognita. Pluclaration of Ferdinand King of Spain, who had been often tarch in his Rorequested by Henry the Seventh to deliver up Edmund mulus. de la Poole Earl of Suffolk his Subject, then fled for prote- Attainted by ction to that Prince's Country; but was always refused; Act of Parliabut being continually importuned by promifes that he ment 12 H. 7. hould not be put to death, caused the Earl to be delivered Co. Infl. fol. 180. up to him, who kept him in prison, and construing his promise to be personal to himself, commanded his Son Henry 5 H. 8. vide after his decease to execute him, who in the fifth Year of Lord Herberts: his Reign in cold blood performed the same. But the ma. History of H.S. his Reign in cold blood performed the faile. But the line Pepin received lice of that politick Prince the Father, and the uncontrol and would not lable Will of the Son are Presidents but of small force; deliver up the example of which not long after gave the French King those that fled

occasion to beware of trusting the latter with a Subject of to him out of his on the like occasion; for Cardinal Pool not many years Newstria, opafter, coming Ambassadour from the Pope to the French ranny. Frede-King, they both being then in amity, and Henry the degar. in reb. Eighth in League with the latter, but in enmity with the Pep. An. 1183; first.

Of Protetion by the Laws of Mations.

first, requested to have the Cardinal delivered up, but could not prevail, being doubly armed, as the Ambassadour of a Soveraign Prince (for fuch is the Pope) and in

the Territory of a Foreign State.

The Ifraelites require of the Benjamites to deliver up the wicked men, the Philistines Samson, Cato gave his Vote that Cafar should be delivered to the Germans, for spoiling them without just cause. Nor are nocent persons injured, if they are either delivered up, or punished; yet does it not thence follow that they must be delivered up or punished: the Romans delivered up those that had done violence to the Carthaginian Ambassadours; yet the Ambassadours of the Assassines having been traiterously murdered by one of the Templars at Jerufalem, the offender being demanded, that to Justice might be executed on him for the act, the Grand Master answered, That he had already enjoyned him Penance, and had directed him to be fent to the Pope, but absolutely refused to deliver him

offender must have committed some publick offence *, as Treason: for most certainly it extends not to private injuries, because there is no President that ever a War was begun for fuch, though they may contribute much, but for those which tend to the subversion or ruine of a Country, they often have been delivered up; Jugurtha of Bocchus in Salust. So shalt thou at once free us from the sad necessity of prosecuting thee for thy errour, and him for his FerdinandLord Treason. And by most Writers it is agreed, that such offenders must either be delivered up or punished, the election is left to their choice into whose Territory they

do make their Countries Afylums +. cing a Noble

Virgin. Mariana lib. 11. Charles Duke of Burgundy delivered up to Lewis the Eleventh the Earl of St. Paul, Constable of France, who flying to some of his own Cities, obtained Letters of Safe-Conduct to come and commune with the Duke, in order to the making his peace with the King; but the Duke after he had him in cuftody, delivered him to the King of France, who immediately after cut off his head. Phil. Comines 1.4. c.12. † Ludovicus Pius the Emperor, received those that fled to him from the Roman Church, as appears by his Decree Anno 817. and Luther himself did not want Princes to protect him from the fury of St. Peter's Chair. Vide his Colloquiums printed in London, An. 1663.

T. Quintus

" Yet out of Churches beyand Seas for private offences, which are universal Sanctuaries, the offenders have been taken: in Lusitania, Chamberlain was taken by force out of theChurch and burnt, for for-

Tyrius lib. 20.

cap. 23. Anno

1173.

IV. But then, and as in this last, so in all other the are fled; though some have held, that in case of protection or Sanctuary for such unfortunate persons, Princes

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but T. Quintus Flaminius fent Ambassadours to Prusias King of Bithymia, for the procuring the delivering up the Brave but unfortunate Hannibal, who accordingly being feized on, I will now, fays he, deliver the Romans of that fear which hath so many years possest them; that fear which makes them

impatient to attend the death of an old man: This Victory of Flaminius over me, who am disarmed and betrayed into cap. 6. S. 2.

his hands, shall never be numbred among the rest of his Heroical deeds: No, it shall make it manifest to all the Nations of the World, how far the ancient Roman virtue is degenerate and corrupted; for such was the Nobleness of their Forefathers.

as when Pyrrhus invaded them in Italy, and was ready to give them Battle at their own doors, they gave him knowledge of the treason intended against him, by Poyson, whereas those

of a later race have imployed Flaminius, a man who hath heretofore been of their Consuls, to practise with Prusias, contrary to the honour of a King, contrary to his faith given, and contrary to the Laws of Hospitality, to slaughter or deliver no

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V. Though Kingdoms and States are looked upon as places of Refuge, yet that must be understood for those that are perfecuted with causless hatred; not to such as have committed that which is injurious to humane fociety, or to other men. Gilippus the Laconian in Diodorus Siculus, fpeaking of the Right of such miserable Fugitives, faith, They that introduced these Rights at first, meant the un- Lib. 13: fortunate (hould expect mercy, the injurious punishment-After - These men, if by the unjust desire of that which is anothers, they have fallen into these evils, must not accuse Fortune, nor impose on themselves the name of Suppliants, for that by right belongs to them that have an innocent mind and

adverse Fortune. Carum occidifti, dum vis fuccurrere: nullum Crimen habes; manus est ibi purior, ac fuit ante.

But the life of those men full of wicked acts shuts up against them all places of Refuge, and leaves no room for compassion. Gicero hath a Saying out of Demosthenes: We must shew compassion to those whom Fortune, not their own evil deeds, hath made miserable. And by the Holy Law, when any one had been flain by an Ax flipping out of anothers hand, the Cities of Refuge were open: the most holy Altar it felf

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Vide Sir Walcer Raleigh, lib. 5.

Df Protection by the Laws of Mations.

was no protection for those that had flain an innocent man maliciously, or had troubled the Commonwealth; which Law Philo explaining faith, Unholy men have no entertainment in the Holy place. Lycurgus the Orator relates, that one Callistratus, having committed a Capital fault, and advising with the Oracle, received answer, That if he went to Athens he should have right : and thereupon in hopes of impunity he fled to the most holy Altar there. notwithstanding which he was taken from thence and put to death by the City most observant of her Religion, and so the Oracle was fulfilled. Princes indeed (faith Tacitus) are like Gods, but neither do the Gods hear the Prayers of Suppliants, unless they be just. Such then are either to be punished, or delivered up at least; yet surely this hath been observed to extend only to those crimes that touch the State, or at least are of a very hainous nature; some times they are expresly stipulated by Leagues to be delivered up; however this is to be observed, that such fort of famous poison- Fugitives and Suppliants, be they Foreigners or Subjects, ing Cook that are to be protected till they have been fairly tryed; and if that whereof they are accused be not forbidden by the Law of Nature or Nations, the cause must be tryed and the Counters of adjudged by the Municipal Laws of that Kingdom or State from whence the crime doth arife. From which it may be observed, that a fault committed in England, and the perfon flying and request made, yet by reason that none can by the Laws of that Nation be tryed but per Pares, nor then but in person, it will thence follow that such may feem out of the general rule; however it may stand with the highest reason, that the fact and proof being remitted over with the request, there may appear a just ground for the demand.

> VI. Whatever the opinion of those Writers have been. the practice of latter Ages have seemed to incline other-Queen Elizabeth demanded Morgan and others of her Subjects fled into France, that had committed Treason against her; the answer of the French King was, Si quid in Gallia machinarentur, Regem ex jure in illos animadversurum; sin in Anglia quid machinati fuerint, Regem non posse de eisdem cognoscere, & ex jure agere; omnia Regna profugis esse libera; Regum interesse, ut sui quisque Regni libertates tueatur, imo Elizabetham non ita pridem, in suum Regnum Mountqumersum,

They of Holland lately delivered up the had been in the wicked Conspiracy with Soiffons in France.

34 Eliz. Cambden, fol. 25.

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merium, Principem Condaum. & alios è Gente Gallica ad- Vide cambd. missife, &c. and they were never delivered up; but the Anno 1585. like was not returned by the King of Scotland, for he promised that he would transmit Ferniburst and the Chancellor too, if they were convicted by a fair Tryal.

Persem King of Macedon in his defence to Martins, Liv. lib. 22. speaking of those that were said to have conspired against cap. 37. Eumenes: So soon as I was admonished by you, and finding the men in Macedonia, I commanded them away, and charged them never to return into my Dominion. The Cry of the late Kopal Marters Blood justly procured them of Holland to deliver up the Regicides to the injured Successor. Anno 1660. And from the Crown of Denmark it was exprelly stipulated they should be delivered, in these words: Item quod In the Alliance si qui eorum qui rei sunt illius nefandi Parricidis in Regem between those CAROLUM Primum beatissima Memoria admissi, ac Crowns, Feb, legitime de eodem scelere attincti, condemnati, vel convicti, &c. provided for 'If any of them who are guilty of the horrid' Murder com- in the fifth Ar-'mitted upon King CHARLES the First of blessed ticle. 'Memory, be either now in the Dominions of the King of Denmark and Norway, or shall hereafter come thither, that as foon as it shall be known or told to the King of Denmark, or any of his Officers, they be forth-'with apprehended, put in safe Custody, and sent back 'into England, or be delivered into the hands of those whom the King of Great Britain shall order to take 'charge of them and bring them home.

VII. Most certain it is, if War be threatned to a Na- That politick tion or People, if they deliver not up the offender, though Princess Queen perhaps he is innocent, and that such is the malice of his elizabeth gave enemies, that they know, they will put him to death, yet equitable anhe may be deferted, especially if that Nation or Kingdom fiver, when is inferiour to others; but then the same ought not to be they demanddone rashly. The Italian Foot that for fook the unfortu- ed Bothwell, she nate Pompey before all was lost, being assured of Quarter answered, that the would eifrom the Victorious Cafar, were condemned by most that ther render

reported the story of that day.

Pope Alexander (in that mortal Feude between him and himourof Engthe Emperour Frederick, who favoured Octavian the Anti- land. Cambden, pope) fled difguifed to Venice, the Duke and Senate being Anno 1593. jealous that the Emperour would demand him, fent an Embally to the Emperour to endeavour a Mediation and Peace,

himup, or fend

into a rage, bidding them go home, faying; 'Tell your

Prince and People, that Frederick the Roman Emperour

Hift. Reip. Ven. in Vita Seba-Riani Cyani Duke of Ve-

Phil. Comines.

lev. I. cap. I.

demands his Enemy, who is come to them for fuccour, whom if they fend not presently bound hand and foot with a fure Guard, he will proclaim them Enemies to 'him and the whole Empire, and that there is neither Alliance or Law of Nations which shall be able to free them from revenge for fuch an injury; to profecute which, he is refolved to overturn all Divine and Humane Laws, that he will fuddenly bring his Forces before their City, and contrary to their expectation, plant his Victorious 'Eagles on the Market-place of St. Mark. This Message being faithfully delivered, the Senate decreed Arms, Arms; and while they were preparing, News was brought that sice, An. 1164. Otho, the Emperour's Son and General of the Cafarian Fleet, was entred the Gulph with seventy five Gallies; the most valiant and religious Sebastiano Cyani resolved to meet him, and having encountred them on the Coast of Istria, defeated Otho and all his Naval Forces, taking forty eight Gallies, Otho their Admiral and the rest either burnt or destroyed; he returned in Triumph for Venice,

> Lewis the Eleventh of France required by Ambassadors of Philip Duke of Burgundy, the delivering up of Sir Oliver de la Marche (who being a Burgundian, had wrote (as was conceived) fomewhat against the Claim of the French to feveral Territories) upon a publick Audience at Liste they were answered by Duke Philip, That Oliver was Steward of his House, a Burgundian by birth, and in no respect subject to the Crown of France; notwithstanding if it could be proved that he had faid or done any thing against the Kings Honour, he would fee him punished according as his

> and not long after Frederick became converted, that Hea-

ven fights the Battels of the Innocent, and on his knees

beg'd pardon of Alexander the fugitive Pope.

faults should deserve.

VIII. But admitting that fuch an Innocent Person ought not to be delivered up, whether he is bound to yield himfelf; by some it is conceived he ought not, because the hature of Civil Societies, which every one hath entred into for his own benefit, doth not require it; from which it follows, that though fuch persons are not bound to that by

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right, properly fo called, yet it doth not follow, but in charity he feems bound to do it; for there be many offices not of proper Juffice, but of love, which are not only performed with praises, but also cannot be omitted without blame; and fuch indeed is the act of fuch a persons voluntary yielding up himfelf, preferring the lives of an Innocent multitude before his own. Cicero for P. Sextus, If this had Idem de finitus happened to me sailing with my Friends in some Ship, that Pi Japiens, & Lerates surrounding us should threaten to sink us, except they gibus parens, in would deliver me, I would rather have cast my self into the civilis official Sea, to preserve the rest, than to bring my Friends either to non ignarus, nticertain death, or into great danger of their life. The Request litati omnium of the Noble Strafford is fresh in our memories.

consulit. And in Livy there is a most excellent saying of same Molossians: Equidem pro Patria qui lethum oppetissent sape fando audivi ; qui Patriam pro se perire aquum censerent. hi primi funt. Liv. lib. 45.

IX. But whether fuch an Innocent Person may be com- * Leg. Desert. pelled to do that which perhaps he is bound to do, may + cofe Inflit. 3. be a question; rich men are bound by the precept of fol. 199. Mercy to give alms to the poor, yet cannot be compelled Plutarch. Photo give: it is one thing when the parts are compared a. cion. Fides agi mong themselves; another when Superiors are compared prodic Liv. 1.7. to their Subjects, for an equal cannot compel his equal, Satius judicebut unto that which is due by right strictly taken; yet mus effe paucos may a Superior compel his Inferior to things which vertue aliquos mala commands; in a famine to bring out provisions they ferre, quam imhave stored up, to yield him * to death that deferts his tudinem. Colours, or turns Coward, to mulct those that wear ex- The Son of cessive apparel t. And the like Phocion, pointing to his Pompey was so dear Friend Nicocles, faid, Things were come to that extre- worthy a Son mity, that if Alexander should demand him, he should think Father, that he be were to be delivered up. It hath feemed that fuch an In- contended with nocent person might be deserted and compelled to do that Anthony & Auwhich Charity requires; but the late ROYAL MARTYR gullus about the feemed of another opinion, when he came to dye, in the worldsthis Pom-Case of the British Protomartyr Strafford.

ing Anthony and Augustus in his Galley, the Captain which commanded it, demanded leave of him to weigh Anchor and to carry away his guefts, and to make his Rivals prifeners: he answered him, That he ought to have done it without telling him of it, and should have made him great, without having made him forsworn: certainly an honest person will never be of the mind of this Captain; therefore in such extremities, Counfellors either for high advantages, or in the great necessities of their Prince, should serve their Masters with their Estates and Goods, but not with their Honour and Conscience.

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12 H. 7. Lord Bacon's

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X. But this delivering up does in no respect extend to

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Soveraign Princes, who are by Divine permission unfortunately driven out of their own Country; and therefore memorable is the great Treaty commonly called by the Flemings, Intercursus Magnus, where there was an express Article against the reception of the Rebels either of Henry VII. or of the Arch-Duke of Burgundy by others. purporting. That if any fuch Rebel should be required by the Prince, whose Rebel he was, of the Prince Confederate, that forthwith the Prince Confederate should by Proclamation command him to avoid the Country, which if he did not within fifteen days, the Rebel was to stand proscribed and put out of Protection. But a Prince, or one that hath a Soveraign Power, and had been contending for his Right, but success not crowning his hopes, occasioned his flight, hath always been excepted; to deliver up fuch, is even against Nature and the Majesty of Power; and therefore it is very remarkable what attempts were made for E. 4. H. 7. nay in the very Treaty of Intercursus Magnus it is memorable, that at that time Perkin Warbeck was contending with H. 7. for the Crown of England by the Name of Richard Duke of York's younger Son and furviving Heir Male of Edward the Fourth. My Lord Bacon does take a particular notice, that Perkin Warbeck in that very Treaty was not named nor contained, because he was no Rebel, but one that contended for the Title. Afterwards when Perkin was fled into Scotland, and there received by the Scotish King, Henry the Seventh fent to have Perkin delivered up, and it was one of the principal inducements of the King to accept of a Peace upon that condition, giving for an argument, that Perkin was a Reproach to all Kings, and a person not protected by the Laws of Nations; but the Scotch King peremptorily denied so to do, saying, That he (for his part) was no competent Judge of Perkins Title, but that he bad received him as a Suppliant', protected him as a person sled for refuge, espoused him with his Kinswoman, and aided him with Arms, upon the belief he was a Prince, and therefore he could History of Hen- not now with his Honour so unrip, and (in a sort) put a lye 19 the Seventh, upon all that be had faid and done before, as to deliver him up to his Enemies. This was fo peremptorily infifted on by the Scotch King, that Henry the Seventh was at length

my the Seventh, fol. 162. 17 1 . . .

History of Hen-

Lord Bacon's fel. 176. 10 ha

> the place in the last of the tented Will Vet il

contented to wave the demand, and conclude a Peace without that Article; notwithstanding the King of Scotland had often in private declared, that he suspected Perkin for a Counterfeit. What endeavours were used by the late Usurper with those of Holland and with Cardinal Mazarine concerning his present Majesty, and how his Royal Person and Brothers were after the Murder of their bleffed Father like Partridges hunted from place to place. the World and the shameful stories of that Age can too well evince. But on the other hand, as we have faid, those that have committed offences that strike directly at Government and the Murder of their respective Princes, have found but cold harbour in the Territories of Foreign Princes; however in cases of like nature Princes have often stipulated with each other for the delivering up offenders of that magnitude as hath been already mentioned.

XI. Persons that have wronged or defrauded Kings of their Revenue, especially in England, upon Letters of Request to those Princes whither they have fled, have

been delivered up.

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Some Florentine Merchants of the Society of the Friscobaldi, being made Collectors and Receivers of the Kings Customs and Rents in England, Wales, Ireland, and Gascoigne. running away with those Monies, together with all their Estates and Goods for Rome, the King sent his Letters of Rott. Rome An. Request to the Pope, desiring that they might be arrested, 4 E. 2. M. 17. and their Persons and Goods seized, and sent over to satisfie him for the damages he and his Subjects had fustained by them, promising not to proceed against them to the loss of their limbs or lives. Upon which Letters, the Pope seized on their Goods, and not long after the King Rott. Rome 4. Writ for the feizing of their Persons, for answering of Dorso. other frauds and injuries.

The like was done for one Anthony Fazons, who had received 500 l. of this Kings Monies, and running away with it to Lorraine, the King writ to the same Duke, de- clauf. 8 E. 2. firing that fearch might be made, and his person seized M. 31. Dorso upon and his Goods fecured in every place within his Ter- pro Rege.

ritories, till he should satisfie the said 500%.

CHAP. XII.

St. Francisco de gli para intelli

Of Contribution paid by Places Reuter to both Armies in War.

I. Of force used to Neuters, whether lawful.

II. Of Neuters, their duty confidered in reference to either of the warring parties.

III. Considerations general touching the same, and the chief matters that are objected by those that scruple thereat.

IV. The case stated generally in the question propounded to our Saviour of paying tribute to Casar.

V. In the payment of Contribution to an Enemy, what is necessary to be distinguisht in the beginning of a War.

VI. Of a second distinguishment drawn out of the first, of such payments, when a War is actually formed.

VII. Where a man pays, but mislikes

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VIII. Where a Country is fully possest, whether payment then is lawful.

IX. Of the state of those that live on Frontiers, their condition considered in reference to procure their peace by Contribution.

X. Of interdiction by him to places from whom faith is owing, Contribution notwithstanding being paid, whether the same creates an offence in them.

XI. Of the genuine construction of fuch interdictions according to the true intention of the same.

XII. Of the impunity and punishment that such innocent offenders may be subjected to, in case of being questioned for the contempt by their right Governours.

I. It is manifest, there is no Right of War over Neuters in War; yet because by occasion of the War many things are usually done against such (Borderers especially) on pretence of necessity, there can be no excuse for the act, unless it be apparent necessity, and that the same ought to be extreme, for then it may give a right over what belongs to another man; for in such case, if the necessity be manifest, there may be such a proportion exacted as the necessity requires, that is, if the Custody suffices, the use of the thing is not to be taken; if the use, not the abuse, be necessary, yet is the price of the thing to be restored. Moses, when the highest necessity arged him and the people to pass through the Land of the Idumeans, first he saith, he would pass along the high-

way,

way, and not divert into their Corn-fields or Vineyards; if he * See to this had need but of their water, he would pay a price for it. The purpose his exworthy Captains, both Greek and Roman, have done the cellent Speech to his Soldiers like: In Xenophon the Greeks with Clearchus promise the near Sicily, Persians to march away without any damage to the Coun- when he martry, and if they might have necessaries for money, they ched into Awould take nothing by force. This vertue is oft com frick, and the mended in * Bellifarius by Procopius his Companion and his March tho-Witness of his actions.

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II. And as the Law doth preserve the Estates and Terri- Vandal. 1. tories of fuch Neuters, or those that abstain from War, so on the other hand fuch ought to do nothing for either Party, but especially for him who maintains a bad cause, or whereby the motions of him who wageth a just War may be retarded; and in a doubtful case they ought to thew themselves equal (as we have mentioned elsewhere) Exemplism noto both in permitting passage, in affording provision for Paratam, lib.8. the Legions or Navies, and in not relieving the Belieged. It is the duty of the Athenians, if they would not fide with Thusydides L. I. any party, either to prohibite the Corinthians from raising Souldiers out of Attica, or permit them to do the like. So the Emperor and Confederate Princes of the Empire, with the Cantons of Switzerland in the late German War, and for of the King of England, who was so careful to preserve the Neutrality, that he issued forth his Proclamation to prohibite all perfons, of what condition foever, to become Souldiers in the Service of any of the warring Princes. It was objected by the Romans against Philip King of the Macedonians, That the League was violated by him two ways, both because he didinjuries to the Fellows of the Roman people, and because he assisted the Enemy with aids and money. fame things are urged by Titus Quintus in his Conference with Nabis, Yet thou fayest, I have not violated you, nor your friendship and society, how often shall I prove the contrary? In short, wherein is friendship violated? by these two things especially: If thou hast my Friends for Enemies: Procop. Goth. I. if thou art a Friend to my Enemies: he is reckoned an Enemy who supplieth them with what is useful for the War.

III. But now there are many things that are useful for the War worthy of some confideration, the which are not so accounted at this day by the Laws of Nations; understand me, That I call the Law of Nations, which is

Narration of row Africk.

Of Contributions in War.

at this day univerfally practifed, as namely the supplying either or both of the warring Parties with Monies, or that weh is called Contribution. Now if the minds of the Subjects cannot be fatisfied by the declaration of the cause, it will certainly be the office of a good Prince or General rather bellum p.1. n.7. to impose upon them Contribution than Military service, especially when that Prince or General hath an Army sufficient to profecute his deligns, the which a just Comman-

der may use as God doth the ready service of the Devil.

Silv. in Verb. circa finem.

The most excellent Grotius having most incomparably treated on, and cleared all the important objections against a just War, together with the incidents of the same; yet this one main of Contribution or paying to both Armies, whether lawful, he hath not touched in any other words but these, Quod sub tributo utrique parti prastando factum din in Belgico, Germanico bello nuper vidimus, est que id conlib. 3. cap. 12. fentaneum mori veteri Indorum +: and fo cites a faving in Diodorus Siculus *, of the Peace that those People maintained in their possessions by reason of such Contributions. But to many persons this instance without further scrutiny, proves insufficient; for there are many, who not finding this liberty in their consciences, unnecessarily chuse rather to give up their bodies to restraint, and to abandon their whole means of subsistance in this World, both for themselves and their Children, (which ought not fondly to be done, unless we would be worse than Infidels, as St. Paul faith) they ground their resolution on this reason, that they know not whether the Monies they give may not furnish to the destruction of many Innocents, and perhaps the just Magistrate; yea, and the total subverfion and ruine of their Country, Liberty and Religion: and therefore though men give and bestow their own where they please, yet in such cases they may not; therefore it may not be impertinent to examine whether these be necessary icruples in themselves, and such as admit of no exception of liberty; or whether those scruples be reafonable, or indeed meer scandal.

> IV. The Scribes and Pharifees fought two ways to entrap Our Saviour; one was as if he had blasphemously taught a new Religion, and a new God, (viz. himfelf) they hoped the people would be provok't to stone him for this, according to the Hebrew Law: The other was,

+ Grot. de Fure Belli ac Pacis, 5.4. 7. 2.

* Lib. 2.

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to bring him within the compass of *Treason*, as if he could not lead great Multitudes after him without traiterous designs; but this gin failed too, because the Multitudes which followed him were always ready to defend him. However, when he was at *Jerusalem*, where the *Roman* Troops and *Prator* were, they thought they had him sure, by propounding this subject to him:

fure, by propounding this subject to him: Is it lawful to pay Tribute to Cefar? which was as much as to fay, We who are descended from Abraham, and are the peculiar People, to whom God hath given the large Priviledges of the Earth at home, to bathe our felves in Rivers of Milk and Honey, to have full Barns and many Children; yea, that GOD himself will be adored in no other place of the World but at this our ferusalem, and that abroad we should triumph over the Barbarous and uncircumcifed World by virtue of that Militia, which he never ordered for any but our felves; how are we then in duty or conscience to submit now to the Ordinances of the Uncircumcifed Romans? or what right can he have to exercise supreme Jurisdiction over us, the priviledged Seed of Abraham, by levying of Taxes on our Estates and Lands, which GOD himself laid out for us, by which means the Emperour and Senate hold this very Temple in flavery, and infult over our very Consciences and Religion, by defiling our very Sacrifices with the mixture of impure Blood; which as they are the price of our Blood, and a Tribute far above Cafars, (payable in no other place but this Temple, which GOD himself built) so our Blood ought not to feem too dear to be facrificed for the liberty of these; and though the Roman State could pretend, yet what can this Cafar pretend? every mans Conscience knows that it was but the other day he usurpt over the Senate, in which resides the true Jurisdiction of Rome; and if that were otherwise, yet how can he pretend to a Title, unless poyson be a pedigree, or violent usurpation a just Election, by which he who is but the greatest Thief in the World, would now pass for the most Soveraign and Legislative Prince? How then are we in conscience obliged to pay Tribute to this Cafar? Though those Lawyers thought in their Consciences that they were not to pay it, and that Our Saviour likewise, as a Jew, thought fo too; yet they supposed he durst not fay so much in the crowd.

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Of Contributions in War.

crowd; nor yet deny it by thifting it off with filence. left the Roman Officers should apprehend him: But when Our Saviour shewed them Cafar's Face upon the Coyn, and bade them Render to Cafar that which was Cafar's, and to GOD that which was GOD's; His answer ran quite otherwife, not as some would have it, that by a subtilty he answered not to the point proposed, for then the sense of the whole Text would found very ill in fuch terms, viz. If there be any thing due to Cafar, pay him it, and if any thing is due from you to GOD, then pay it likewife; This had been a weakening of GOD's Right for Cafar's, and to have left a desperate doubting in a necessity: 'Tis beyond all cavil that Our Saviour's opinion was politive for paying of Tribute to that Cafar, because de facto he did pay it; and the plain reason of it appears evidently in this his answer: Cefar's Face was upon the Coyn, that is to fay, Cafar by Conquest was in possession of that Coyn, by posfelling the place where he obliged them to take it; Coyning of Money being one Prerogative of Soveraign Power.

Mat. 22. 20.

Coke 3. Instit. fol. 16, 17.

V. But to come more close to the question, whether Contribution may lawfully be paid : perferre & inferre bellum; the one is active, and properly at the beginning of a War, and in a place where yet no War is, and where its cause only, and not its effects can be considered; in this case every thing ought to be very clear for warrant of a mans Conscience, because of the calamities which he helps to introduce, and is in some manner the author of : the other is passive, and there where War or the power of War is actually formed, which is the case of this Dif-

VI. Secondly, We are to distinguish betwixt that which cannot be had, nor the value of it, unless we actually give it, and that which may be taken by the Law of War

whether we contribute or no.

VII. Most certain it is, though a War be not yet actually formed in a place, yet a scrupling conscience, which likes not the cause, may be excused in contributing to it in this one case, viz. if some number of men, able to take what they ask, demand (with an armed power) the payment of a certain fumm to be imployed in War, then in fuch a case, the man, whom we suppose, may pay it as a ranfom for his life, or give it as a man doth his purfe, when he i is a arm den and

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he is surprised in the High-way, because to this man it 4 H. 4. 2. is as much as if the whole Country were possest with an armed power. So feveral Dutchies and Signiories depen- Procopius in the dent on the Empire, do in the present War between them third of Gotth. and the Crown of France, pay Contribution at this day. of Totilas when he befreged Rome, faith, Agricolis interim per omnem Italiam nibil mali intulit, fed juffit eos ita, un foliti erant, terram perpetuo fecuros colere, modo at ipfi Tributa perferrent: This, faith Caffiodore, is the greatest praise, 12. 15.

But if the Person or Country be not for the time in full possession of him whose cause he scruples at, and that he or they have not a probable fear of extreme danger, nor as probable affurance, that without his help the thing demanded nor its value can be taken from him or them, then there's little excuse remains for the act, because the very act (which his conscience dislikes) participates more of

action than of passion.

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VIII. But where a Man or City is fully polleft by an invading power (be the same just or unjust) from whom he or they cannot fly, nor remove their fubstance, most certain the payment of Contribution is no gift any more than he (as above) who with his own hands being fet upon by Pirates or Robbers, puts his purse into their hands; for the Law calls not that a Gift, nor excuses the party from 44 E.3. 14. taking it: And although the parties may imploy the fame 4 H.4. 3. to the destruction perhaps of Innocents, and the like; yet Coke 3. Inflig. that is an action out of their power that give, as far as winds and tempelts are, to which two, as we contribute nothing, fo we cannot be scrupulous in our Consciences concerning their bad effects; nor is the fame repugnant to the Canon Law, (which teaches us humanity, and the c.2. de True. imitation of all their vertues) and therefore persons, whose & Pace. Nic. lives are innocent and harmless, ought not to be subjected Damasco to danger or plunder, which hardly can be avoided without Contribution or Tribute.

IX. Again, those that live on Frontiers, whose condi- The quiet of tion is more ticklish and deplorable, because they are not not be had fully possest nor taken into the line of either party, these without Arms, live as it were in the Suburbs of a Kingdom, and enjoy not no Arms withthe fecurity or priviledges of others, yet fuch persons may out Souldiers lawfully contribute to both; for though they be but partly without Conpossest by one, and partly by the other, in respect of their ribution. Tacit.

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sudden abandoning them, yet both parties have the power of destroying them wholly; wherefore those former reafons which justifie those fully possest, do also acquit the payments of these, for their condition here is more calamitous, feeing they are really but Tenants at Will, exposed to a perpetual Alarm, and that both parties wound one the other, only through their sides, as those this day that are fituate between France and Germany; for being perhaps Neuters in the War, they are in that case by the Law of Arms to shew themselves equal to both, in permitting of passage, in affording provisions for the Armies, and in not

Exemplum nobile vide apud Parutam, lib.8. Grot. 1.3. c.17. felieving the belieged.

X. Nor can the interdiction of him, to whom fuch owe faith and obedience, any ways create the fame an offence, fince the declared Wills of our Governours cannot make all those of our acts fins, when we obey or submit to that power, which against our wills, (as much as against theirs, and it may be with more of our mifery) hath divested them of the power of their Rights, and deprived us of the power of their Government; and by the Laws of

And fince Princes by their commands cannot change

War, they who have overcome, should govern those whom Grotius de Jure they have overcome; and therefore what soever is exacted by the Conquerours, may justly be paid by the Conquered.

Bell.ac Pac. 1.3. 68. S. 11. C.12. 5.4.

> the nature of humane condition, which is subject naturally to those fore-mentioned changes, it would feem exceeding hard to oblige us to almost moral impossibilities; and though those political Commands were as Laws, yet doubtless they ought not to be obliging, but according to the Legislative Rule, which is cum sensu humana imbecillitatis, this is that which is called the prefumptuous Will * of a Governor, or the mind of a Law: for in extreme necessity it is to be prefumed that both their wills proceeding from the rigour of what they have declared, rather than by holding to that which is their supposed right, introduce certain miseries and confusion, without receiving any benefit thereby to themselves. Nor could they of Utrecht, and others of the Conquered Cities in Holland, abandoned afterwards by the French, and entirely preferved from deftruction, be condemned by their Confederates, for the fumms by them promised to the Enemy for the preservation of the Neither fame.

Fure hoc evenit at quod quisque ob tutelam corpores sui jure fecife existime-* Leg.ut vim.

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Neither are such Commands or Interdictions without their sense and profit, though they be not positively obeyed, for thereby Governours shew to all the World, that they renounce ced by the no part of their right, -no, though it be there where they Laws of Leacannot exercise any part of their just power.

And that is apparently evingues; for fuch being made,

the same remains, although the same King or his Successor be driven out of his Kingdom, for the right of the Kingdom remains, although he hath loft the possessions. Grotius de Jure Belli ac Pacis, lib. 2. cap. 17. S. 19.

XI. Now the true intention of fuch Commands or Interdictions is, that the Enemy should not by any means be affifted or ftrengthned; but if fuch prohibitions should be obeyed, nay at such a time, when they and all their substance are absolutely possest by the Enemy, most certain fuch commands dash against themselves, and the one countermands the other; for if they refuse to submit in fuch a case, then they do that which advantages their Enemies, because at that time they will take all, whereas in case of submission they ask but a part.

XII. In all Wars there are always some, by whose disaffections Enemies gain more than by their compliance,

just as Physicians do by distempers. And although, by after variety of successes, the just Governour should recover that place, which so submitted to the power of their Enemies, and for that reason should punish those that were pliable to extreme necessity; yet it follows not upon that, that they who so conformed, finned, or did that which was absolutely unlawful; for we well know that reason of State oft calls for Sacrifices where in Republica there is no fault to expiate: Oftracifm and Jealousie make idem est nimi-

away those who are known to deserve most, but in strict um, & nibil right (which is the term of this question) the just Governor merers eight to look upon them as more unfortunate than faulty.

CHAP.

CHAP. XIII.

Of the Naval Bilitary part.

i. The advantage that Princes have by a good Commander.

ii. The love that naturally proceeds from the Mariners to those that are valiant and generous.

III. Princes in pradence ought not to liften too much to the complaints against Commanders.

IV. Of the faults generally considered in Souldiers and Mariners.

V. Of the punishments that generally wait on such offenders.

VI. Of Drunkenness, Swearing, and other such fort of impieties, not to be suffered in Fleets.

VII. Spies, if lawful to use them by the Laws of Nations, but being deprehended are to suffer death; and how they are to be dealt withal by the Laws of England.

VIII. It is not lawful for a Friend or Neuter to relieve an Enemy, and persons so offending, how punisht.

IX. Ships taken as prize, the Ship, papers, and other matters concerning the same are to be preserved.

X. Of thing: taken and acquired in war, how the right of them becomes vested in the Captors, and how that is to be understood by the Law of Arms.

XI. To steal the Cables or other Furniture of the King of England's Ships, how punishable at this day.

XII. Ships surrendred or voluntarily yielded, how to be dealt with, and to those that shall resist, if entired by force, whether quarter may be resulted.

XIII. Ships of War generally ought not to be yielded; but if entred or disabled, whether they may not accept of quarter, flanding with the Oath called Sacramentum Militare. XXI.

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XIV. Of obeying Orders, the same ought punctually to be followed; and if broken, though the act succeeds well, whether the same subjects not the Actor to punishment.

XV. Of the obligation incumbent on Commanders and Souldiers to behave themselves valiantly, and the right of slaying an Enemy, where lawful.

XVI. Ships how obliged by the Law of Arms for the assistance of our another, and of the duty of these that bave Fleets under their Con-

XVII. An Enemy beaten ought to be pursued, and how far it is lawful to stay such stying with their lives in their hands by the Law of Arms, and how the resking swend ought to be governed.

XVIII. Persons exempted from the sword by the Laws of Nature, Nations, Civil and Canon, and by the Municipal Laws of some Countries.

XIX. Mutinying how esteemed, valued, and punished at this day by the practice of Armies, and by the Laws of England.

XX. whether it be lawful to decoy the Subjects, Souldiers, or Mariners of an Enemy to forsale his Prince or General, and to bring over his Men, Ships, or Arms, and where by Law they may be received; and how such deserters may be punished by the Laws of Nations and of England.

XXI. Of

Of the Mabal Wilitary part.

XXI. Of Seducers, Meffage-carriers and Decoyers of Souldiers, how to be handled by the Law of Arms.

XXII. Of those that shall disobey or Strike their Superiour Officers, how

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XXIII. Of mutinying, and those that (hall act in the same how punished, though they have a just cause of complaint.

XXIV. Of the care incumbent on Commanders and Masters of the Great Ships, in reference to their safety, and the punishment of wilful burning and destroying them.

XXV. Of the general offences at Sea, how punished.

XXVI. Court Marshals how erected, and what operation their Judgments have, and upon whom. XXVII. Judges and Advocates

Power in reference to give an Oath. and the Admiral's power how limited to the punishing of offen-

XXVIII. Of maimed Souldiers and Mariners, and the provisions that the Law makes for them at this day.

XXIX. Of Triumphs.

A N Excellent General is an evidence of the Fortune of a Prince, and the Instrument that occasions the happiness of a Kingdom; and therefore when GOD makes choice of a Person to repair the disorders of the World, or the good of a particular State, then is his care shewed in the furnishing him with necessary Principles to undertake great matters; the thoughts are put in his Soul by that Eternal Commander to execute, he troubles and confounds his Enemies, and leads him as by the hand to Victories and Triumphs: And one of the greatest expedients whereof he ferves himself for this purpose, is to raife unto him excellent Men, both in Courage and Conduct, to whom he communicates his care, and who help him to bear the weight of Affairs. Alexander had never conquered Asia, or made the Indies to tremble, but for Ephestion, Parmenio, and Clitus; Casar gained many a Battel by his Lieutepants; and the fairest Empire of the World, which ambition and the evil of the times had divided into three parts, was reduced under the Dominion of Augustus by the valour of Agrippa; Justinian triumphed over Persia, and destroyed the Vandals in Africa, and the Goths in Italy by the aid of Bellifarius and Narcete: And it is most certain, that Noble Commanders are the Glory of their Princes, and happiness of the People; on the other hand, base, cowardly, and treacherous Generals are the shame of the one, and the despair of the other.

II. Hence it is, that Souldiers and Mariners draw their lines of love even to the mouths of Cannons with a good General, but mutiny and hate to the main Yard end a-

Df the Mabal Wilitary part.

gainst one that is bad; for to obey them who are not their Soveraigns when they do them hurt, when they in. fult and are cruel in cold blood, and base, cowardly, or treacherous in Battel, is a fad necessity for them, and a hard essay of patience; yet must they be obeyed, and the Souldiers and Mariners must not rebel or repine, but submit till the Soveraign redresses the misfortunes.

III. Again, Princes ought not to liften too much to

the mutinous demands of the Crew, or any others, whose ambition watches their ruine, whereby to conceive anger against their Commanders; for it is easier to purge out the choler and discontent that is got under the hatches, than to provide Commanders of Conduct, Courage, and Faithfulness to govern their Expeditions. Bellifarius, that most excellent Commander, who had no other crime than his Reputation, and was not culpable, but that he was powerful, having conquered Persia, subdued Africa, humbled the Goths in Italy, led Kings in Triumph, and made ap. pear to Constantinople somewhat of Old Rome; an Idea of the ancient Splendour of that proud Republick; after all his eminent Services, this Great Person is abandoned to Envy, a fuspicion ill grounded destroys the value of so many Services, and a simple Jealousie of State wipes them out of the memory of his Prince: but he rests not there, for the demeanor had been too gentle, if cruelty had not been added to ingratitude; they deprive him of all his 5. 2. And in Honours, they rob him of all his Fortune, they take from that whole Pa- him the use of the day and light, they put out his Eyes, and ragraph the in- reduce him to the company of Rogues, and the miferable Bellifarius demands a charity, even that Bellifarius the by Princes to Chiefest General of his Age, and the Greatest Ornament of many Brave & the Empire, who after fo many Victories and Conquests, accompanied with fo high and clear a Vertue, and in the

> Nor was this cruel and hasty reckoning of Justinian let flip without a cruel payment; for Narcete, who was as well a Successor in Merit as in Authority to Bellisarius, having notice of a disdain, conceived likewise against him upon a fingle complaint, refolved not to expose himfelf as a Sacrifice to their malice; and therefore better to fhake off the yoke than stay to be oppressed, foon spoiled

Procopius Hift. Vandal.in Vita Bellifarii.

Vide Sir Walter Raleigh L. s. c. 6. gratitude that hath bin fhewn Noble Generals and Com- midst of Christendom, was reduced to so abject and low a manders, there particularly e- mifery. numerated.

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the affairs of Justinian, for the Goths revolted, and Fortune would not forbear to be of the party which Narcete followed, nor to find the Barbarian where fo Brave a Captain was ingaged. Therefore not one or many faults are to be listened to against Commanders, but patiently heard and redressed, not to disgrace or lose them; for such having committed a fault, yet being admonished by love, may endeavour by future Services to make recompence by fome noble Exploit; but difgraced, become Instruments often of danger and ruine to their Superiours.

IV. Souldiers and Mariners faults are either proper to

themselves, or common with others.

Those are common with others which other men fall into, and are corrected with like ordinary proceeding as other crimes of like nature, as Man-flaughter, Theft,

Adultery, and fuch like.

Those are proper which do purely appertain to the Naval Military part, and are punished by some unusual or extraordinary punishment: As are these; Not to appear at the over musters or calling over the Ship, to serve under him he ought not to serve, to vage or wander long from on Ship-board, although he return of his own accord, to 6. De re milit. forfake his Fleet, Squadron, Ship, Captain, Commander, De Castrensi peor Officer, to leave his standing to fly over to the Enemy, culio, & c. ioto betray the Fleet, Squadron or Ship, to be disobedient to his superiour Officers, to lose or sell his Arms, or steal militaris annoanother man's, to be negligent in his Officer's command ne, & c.de vells or in his watch, to make a mutiny, to fly first out of the militari. Battle, and the like, which are very frequently fet forth in the Titles of the Digest and Code of Military affairs, and other like Titles which accompany them.

Arrian, who wrote the Life of Alexander the Great, observes, Everything is counted an offence in a Souldier, which is done contrary to the common Discipline, as to be negligent,

stubborn, and slothful.

V. The punishment wherewith Souldiers and Mariners are corrected, are those corporal punishments, or a pecuniary mulct or injunction of some service to be done, or a motion or removing out of their places, and fending away with shame.

By Capital punishment is understood for the most part death, or at least beating with Cat with nine tails, as they com-L 3

dem tit. 1.12.C.

commonly term it, Ducking, Wooden horse, Gauntlet, and fuch like, unless happily it be pardoned, either for the unskilfulness of the Mariner or Souldier, or the mutiny of the Grew or Company, being thereto drawn by Wine, Wantonness, or for the commiseration or pity of the Wife and Children of the party offending; all which is left to the discretion of the Lord Admiral and others the Su-

preme Commanders, or Captains.

VI. It is necessary that in Armies and Fleets all manner of impiety should be prohibited, especially that of Swearing and Curfing; for such are sins so foolish, that they unawares trip men into damnation, rendring men worse than beafts, by how much the more they court that vanity of fin without any of the appendant allurements which other vicious actions are accompanied with, the same in the end teaching men to disavow GOD in their discourse and actions by their intemperate and inconsiderate invoking him in their Oaths. Against such, as also against those that shall give themselbes up to Cursing, Erecrations, Dzunkennels, Uncleannels, oz other fcandalous actions in derogation of Gods Honour, and cozruption of good manners, Fines and Imprisonment, or fuch other punishment may be inflicted on them by a Court

13 Car. 2.cap. 9. Artico 2.

By Order of his Royal High- sparfbal, which is now reduced to the forfeiture of one mess the Duke of York 1666.

days pay; but for drunkenness, the same extends not to Commanders, or other Commission and Warrant-Officers; for they upon conviction before the Admiral shall be ren-

Artic. I.

Artic. 3.

pay. VII. By the Laws of Nations, Spies may be fent to furvey the Enemy's Force, Fleet, Station or Squadron, and make discovery of whatsoever may give advantage to the persons sending: So Moses and Joshua did into the Holy Land. On the other hand being deprehended, they are to

dred uncapable of their Command.

And a Lyar convicted on Ship-board, shall be hoisted upon the main-stay with four Braces, having a Broom and Shovel tyed to his back, where he shall continue an hour, every man crying, Alyar, alyar, and a week following he shall clean the Ships head and sides without board, according to the ancient practice of the Navy; if he receives greater Wages than for an able Seaman, then half a days

Liv. l. 2. c. 3. Soult. ad Leg. Corn. de Sicariis pun.

> be put to death, as Appian faith. But whether it be lawful

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ful to make Spies of the Subjects of that Prince with whom the War is begun, hath been some doubt: It is not lawfor the ful for a Subject to kill his King, nor to yield up his tiny of Ships of War without Publick Council, nor to spoil his fellow Citizens, to these things it is not lawful to tempt Wife a Subject that remains fuch; nor may any reply, That to him who impelleth fuch a man to a wicked act, that act, as namely the betraying of his Enemy, is lawful; no body doubts, he may indeed do it, but not in that manner; but yet if a Subject will voluntarily defert his Prince and Country, i. e. fo enter into a correspondency with the Enemy of it, without any impulse but his own covetous or revengeful mind, furely it cannot be unlawful for the other to receive him. We receive a Fugitive by the Law of D.de acq. rerum War, faith Celfus, that is, it is not against the Law of War Dom. to admit such, even a Traitor, who having deserted the Enemies part electeth ours; however fuch persons ought not Peace with Phito be rendred, unless expresly stipulated *, but ought to ans, Antiochus, be pardoned. 13p the Laws of England, if any Dfficer, Polybius in ex-Souldier oz Mariner, in actual Serbice, and in pap in cerept.legat. 11. his Wajesties Fleet, oz any other person in the same, fall 28.35. Menand. gibe, hold, og entertain any intelligence to og with any Protect. idem Bing, Pzince oz State, being Enemp to, oz any perfon in Rebellion against his Majesty, his Heirs and Suc- stat. 13 car. 2. ceffors, without leabe or authority from the King, Ad- cap.9. Artic. 3. miral, Mice-Admiral, og Officers in Chief of any Squadron, thep are to suffer death. Now the bare receipt of a Letter or Message from an Enemy, will not make a man subject to the penalty of this Article; and therefore the subsequent Article explains the precedent, in which it is provided, That if any inferiour Dfficer, Mariner, 02 Souldier shall receive any Letter of Message from any Bing, Fozeign Pzince, State, oz Potentate, being an Enemy, og on their behalf, and if fuch perfon doth not rebeal the same within twelve hours, habing opportunity. to to do, and acquaint the Superioz Commander with it, fuch perfon is to luffer death; fo likewife, if luch Supe- Arice 4 rioz Afficer, oz Mariner being acquainted therewith by an inferiour Officer, Mariner, og other, og fuch Superioz Dfficer, Commander og Mariner , in bis own perfon, receibing a Letter oz Dellage from any lich Enemy oz Kebel, and spall not in conbenient time rebeal the same to

Leg. transfug. * As was in the lip, the Atoli-

Ad Leg. Corn.

Tatit. Hift. 5.

Of the Mabal Willtary part. the Admiral, Mice-Admiral or Commander of the Squa-

den, shall suffer the like pain of death, of such punish. ment as a Court Marshal wall inflict. Now Spies are put to death fometimes justly by those that manifestly have a just cause of Warring by others, by that licence which the Law of War granteth; nor ought any person to be moved with this, that fuch being taken, are punished with death; for that proceeds not from their having offended against the Law of Nations, but from this, that by the fame Law de Sicariis pun. every thing is lawful against an Enemy: And every one, as it is for his own profit, determineth either more rigoroully or gently: but that Spies are both lawful and practicable, there is no question; for at this day by the general instructions of Fleets, there are always out of each Squadron some Frigats or Ships appointed to make discovery of the Enemy, and upon fight to make fail, and to stand with them, in order to take cognizance of their Force, as well Ships of War as Fire-Ships, and in what posture they lay; which being done, those detecting Frigats are to speak together, and to conclude on the report they are to give, which done, they return to their respective Squadrons; such Ships in fuch fervice are not obliged to fight, especially if the

Bartol. Leg. nul-Fudeis Calico-

VIII. Again, it is not lawful for any, be he Friend or Lus. Leg. 2. de Neuter, to relieve an Enemy, much less for a Souldier or Mariner in pay: to supply bim that conspires the destru-Etion of my Country, is a liberality not be allowed of: he is to Procop. Goth. I, be accounted an Enemy that supplies the Enemy with necessaries for the War; and therefore by the Laws of War Stat. 12 car. 2, is fo to be esteemed; and by the Laws of England, If any cap. 9. Artic. 5. person in the Fleet relieve an Enemy or Revel in time of Mar with Money, Mictuals, Powder, Shot, Arms, Ammunition, or any other supplies what weber, directly or indirectly, be shall fuffer death.

Enemies Force exceed them in number, or unless they shall

have an apparent advantage.

Artic. 6.

IX. Ships being affaulted and taken as prize, all the Papers, Charter-parties, Bills of Lading, Pals-pozts, and other waritings what soeber that shall be taken, seized or found aboard, are to be duly preferbed, and not torn or made awap; but the berp Dziginals are to be fent up entirely and without fraud to the Court of Admiralty, of to the Commander appointed for that purpose, in

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order to the condemnation of the Prize, upon pain of the Captors losing their share in the Prize, and also subject to such other punishment as a Court Warshal thall think fit.

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X. The Right of taking of spoil was approved of GOD, within those natural bounds which have been already mentioned, as is further evinced by the appointment of GOD in his Law concerning the Acquisition of Empire over the conquered, after refusal of Peace, All the Foil Deut. 20. 14. thereof shalt thou take unto thy self, and thou shalt eat the spoil of thine enemies, which the LORD thy GOD hath given thee. Hence it is, that things taken from the Enemy, presently become theirs that take them by the Law of Nations, and fuch acquisition is called Natural, for not any cause, but the naked fact is considered : And thence Leg. Nat. & ule. a Right ariseth; for as the Dominion of things began D. de acq. ver. from Natural possession, and some print of the same re- Dom. tit. de mains in the things taken in the Land, the Sea, and the rer. dom. Air, so likewise of things taken in War; all which in- Que armis que-Stantly become theirs that first become Captors: and from fita effent & the Enemy are judged to be taken away those things also parta belli tare, which are taken away from the Subjects of the Enemy. non dimitten-But though this gives a Right to the Captors, yet that da. must be understood to the Soveraign, or to the State that imployed them, and not to themselves; but if they have any share of the Prize, the same proceeds by the condescension or grant of the Soveraign, which may be enlarged or abridged as occasion serves; and therefore by the Laws of England, Ships of War having taken a Prize, the Goods and all manner of Lading is to be preserved, till Adju- Artic. 7. dication shall pass; but that is to be understood, where the Ship voluntarily yields: but Ships whom they shall assault, and take in fight as prize, the pillage of all manner of Goods and Merchandizes (other than Arms, Ammunition, Tackle, Furnitures or Itores of fuch Ships) as shall be found by the Captors, upon or above the Gun deck By the donariof the Ship, become their's; but this is to be understood on of His Mgwhere such prize may lawfully be possest; for there are jesty. times when such are not to be medled with; and therefore it is against the rules of War in fight, if some of the Enemies Ships are there disabled; yet those Ships that did to disable them, if they are in a condition to pursue

Artic. 8.

the Enemy, cannot during the fight take, possess, or burn fuch disabled Ships, and the reason is, left by so doing some more important service be lost, but they are to wait for such Booty, till the Flag-Officers shall give command for the

Vluzzali, King of Algier, in the famous Battel of Lepanto, having behaved himfelf very valiantly there against the Christians, so that he destroyed several of their Gallies, and others, he took amongst the rest the Gallies of Pietro Bua of Corfa, of the Prior of Messina, and Ludovico Tipico of Trahu, and Benedeto Soranza, the which he towed after him before the Battle was compleated; but that getting proved the loss both of the one and the other; for the Turks out of covetousness of the plunder, or otherwife thronging into them, occasioned their taking fire, in which the Victors in those flames became Victims, and after followed the total rout of the Ottoman Power.

Hift. Reipubl. Venet. fel. 127,

Artic. 8.

Artic. 9.

Cræfus periwading Cyrus not to give up Lyged by his men, tells him, Non meam, inquit, non res meas diripies, nihil enim ad me jam ifta adpertinent : tua

XI. It is almost impossible, but that in Ships of War. which in these days carry so considerable a force of men, there will be some amongst them that have heads of knavery, and fingers of Lime-twigs, not fearing to steal that from their Prince which is applicable only for the good of their Country; fuch fort of Night-wolves when caught. are to be severely punished; and therefore to steal or take away any Cables, Anchors, Sails, or any of the Ships Furniture, or any of the Powder of Arms, or Ammunition of the Ship, subjects the offender to the pains of death, 02 to fuch other punishment as the quality of the offence shall be found by a Court Maribal to deferbe.

XII. By the ninth Article, Foreign Ships or Veffels taken as Prize, without fighting, none of the Captains, Masters, or Mariners being Foreigners, shall be stripped of their cloaths, or in any fort beaten, pillaged, or evil intreated; and the persons so offending being obliged to render double damage: this dia to be pilla- Law most expresly doth not extend to those that obstinately shall maintain a Fight; for most certain, by the Law of Arms, if the Ship be boarded and taken, there remains no restriction but that of charity; and if a Ship shall persist in the engagement, even till the last, and then yield to mercy, there hath been fome doubt, * whether quarter ought to be given to fuch; (for they may ignofunt , tua illi perdent, Herod. lib. 1. * Vifter. de Jure Belli n. 49, & 60.

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rantly maintain with courage a bad cause) but in Captives p. & c. de 74and those that yield or defire to yield, there is no danger. ris & facti ig-Now that fuch may be justly killed, there must be some norantia. antecedent crime, and that fuch a one as an equal Judge would think worthy of death; and so we see great severity shewed to the Captives and those that have yielded, Princes indeed or their yielding on condition of life not accepted, if after are Gods, but they were convinced of the injustice of the War, they had neither do the nevertheless persisted with hatred or cruelty, if they had Gods hear the blotted their Enemies Name with unfufferable difgraces, prayers of supif they had violated their Faith or any Right of Nations, they be just. as of Ambassadours, if they were Fugitives: But the Law of Nature admits not taliation, except against the very The Syracusians individual person that hath offended; nor doth it suffice were accused that the Enemies are by a fiction conceived to be as it were for that they flew the Wives one Body; though otherwise by the Laws of Nations, and and Children by the Laws of Arms, and at this day practifed, in all of Hycetas, be-Fights, the small Frigats, Ketches and Smacks are to ob. cause Hycetas ferve and take notice of the Enemies Fire-Ships, and to had flain the watch their motion, and to do their best to cut off their of Dion. Piu-Boats, and generally the persons found in them are to be put tarch, Timon, > to death, if taken, and the Vessel, if not taken, destroyed; Dion. and the reason why the extremity of War is used to such, is that by how much the mischief is the greater by the act of fuch men, if executed, by fo much the punishment is aggravated, if taken, and quarter denied them by the Law of War.

XIII. Every Captain or Commander upon signal or order of In England Battle, or view, or fight of any Ships of the Enemy, Pirate, when the Ador Rebel, or likelihood of engagement, are to put all things miral would have the Van of the Fleet to tack first, the Admiral did generally put abroad the Union-Flag at the flaff on the fore-top-Mast-head (that was when the Red Flag was not abroad.) But if the Red Flag had been abroad, then the fore-top fail was to be loared a little, and the Union-Flag was to be spread from the Cap of the fore-top-Mast downwards. When the Reer of the Fleet was to tack first, the Union-Flag was put abroad on the Flag-staff of the Mizon-top Maft-head, upon which two fignals the Flag-Ships were to continue the same fignals on their Ships', till the same was answered: when the Admiral would have all the Ships to fall into the Order of Battle prescribed at the Council of War, the Union-Flag was put on the Mizon-Peak of the Admiral's Ship, upon fight of which the Admirals of the other Squadrons were to answer it by doing the like fignal : when the Admiral would have the other Squadrons to make more fail, though himself shorten fail, 2 white Enfign was put on the Enfign-staff of the Admiral's Ship: Instructions first of May 1666, but yet fignals may be altered or changed as often as it shall please the Admiral to think the same necessary and convenient.

Artic. 10.

in the Ship in fit posture for a Fight, as the breaking down the Cabins, clearing of the Ships of all things that may impede the Souldiers in the preferving the Ship and themselves, and endamaging the Enemy; and every such Commander or Captain are in their own persons, and according to their place, to hearten and encourage the inferiour Officers and common men to fight valiantly and couragiously, and not to behave themselves faintly, under the disgrace of being cashiered, and if he or they yield to the Enemy, Pirate, or Rebel, or cry for quarter, he or they so doing, shall suffer the pains of death, or such other punishment as the offence shall deserve. Now, though Souldiers or Mariners have obliged themselves faithfully to ferve in the Expedition or Navy; yet that is to be underflood no further than his or their power to do his utmost in his or their Quality; for though the obligation for the Service be taken in the strictest terms of undergoing death and danger; yet it is to be understood always conditionally as most promises are, viz, if the action or pasfion may be for that Fleet or Princes advantage; and therefore if the Fleet or Squadron is beaten, and the Ships are disabled, and left scarce without any to defend them, Lipfaus de Mil. now the Souldiers or Mariners remaining can do no more for their Prince than dye, which indeed is to do nothing at all, but to cease for ever from doing any thing either for him or themselves; in those straits therefore it is not Oath thus, Ob- repugnant to their Oath called Sacramentum Militare, to ask quarter or strike, and having beg'd a new life and taken it, they are bound in a new and just obligation of Fidelity to those whom they were bound to kill few hours peratoribus jux- before; neither can the Prince or General expect by virta vires: and tue of their former obligation to him, they should kill fuch, fays he, any in the place where the quarter was given: however this Fidelity hath not its inception from the time of taking quarter; but when the Battle is over, and that time which is termed cold blood; for without all controversie, if a Ship be boarded, and quarter is given, yet if while the Fight lasts, the persons Captives can by any possibility recover their liberty and Ship, they may by the Law

Rom. l. 2. dial. 6, & 4. And Polybius expreffeth the temperaturus Sum, & facturus quicquid mandabitar ab Imwere termed Milites per Sacramentum.

* Sir Thomas of Arms justly acquire the same *. Chichley did fo aboard the Katherine in bello, Anno 1666. inter Carolum Secundum & Celfos & Praportio tes Dominos Ordines Generales Fæderati Belgii.

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And fince impunity is granted to fuch unfortunate deferters, yet it must be apparently evident and fully proved, that they were reduced into a condition beyond all hope in the Battle: and therefore the Foot that forfook the Unfortunate Pompey before the field was lost, were justly condemned for the breach of the Roman Discipline and Law of Arms: and therefore the Article hath not pofitively declared death only, but added, or fuch other punishment as the offence shall deserve, which provision leaves the Action to be judged and punished by a Council of War, who know best what's to be done in cases of that nature; however, a base or cowardly yielding, or crying quarter, is to be punished with death, and that without mercy. XIV. The obeying of Orders hath in all Ages been in Xenopin. Cyr. Pix-

mighty esteem: Chrysantus, one of Cyrus's Souldiers, being tarch. Qu. Rom. upon his Enemy, withdrew his Sword, hearing a Retreat 39. 6 Marcell. founded; but this comes not from the external Laws of vide in Tir. Nations; for as it is lawful to feize on the Enemy's Goods, Ships of War. fo likewise to kill the Enemy, for by that Law the Enemies are of no account; but fuch obedience proceeds from the Military Discipline of several Nations. By the Romans it was a Law noted by Modestinus, That whoso. Leg. desert. D. de ever obeyed not his Orders, should be punisht with death, re Milit. though the matter succeeded well: now he also was supposed not to have obeyed, who out of Order without the Liv.lib.7. Man-Command of the General entred into any Fight. For if liani Imperia. fuch liberty were lawful, either Stations would be deferted, or (licence proceeding) the Army, Fleet, or Squadron would be engaged in unadvised Battles, which by all means is to be avoided. M. Capello, a Venetian Gentle- The Order of man of an ancient Extraction, having the Charge of the Battle is to be guarding of the Venetian Gulph*, met with the Barbary preserved, and Fleet, whom he so assaulted, that he burnt and took di are to endeavers of them; among the rest the Admiral Galley of Algier, your to keep

(a Vessel of vast bigness) which he brought with him away, in one line as and the remains at this day a Trophy in the Arfenal of Ve. much as may nice; the Service, although Noble and Honourable, and be; and though fuch as brought renown to the Republick, yet in regard they have beaten fome of the

Enemy, yet must they not pursue a small number, before the main of the Enemy be beaten or run. Nor ought they in chasing, chase beyond fight of the Flag, and at night all chafing Ships are to return to the Flag. Inftr. 22, 23. in May 1. 1665. * History of the Republick of Venice, fol. 170, 171.

Artic. II.

Of the Baval William part.

it was an Action exceeding his Commission, he was adjudged to punishment: (but his great Merit and Alliance preferved his life) fuch an exact obedience that Signory expects to be paid to her Orders, be the fuccess never so glorious. And by the eleventh Article, Chery Captain, Commander, and other Officer, Seaman oz Souldier of and Ship, Frigat of Mellel of Mar, are duly to obserbe the Commands of the Admiral oz other his Superioz, oz Commander of any Squadzon, as well for the affault. ing and fetting upon any Flet, Squadzon, oz Ships of the Enemy, Pirate of Rebels, of jopning Battle with them, or making defence against them, as all other the Commands of the Admiral , og other his Superioz Commander, the disobeying of which subjects him to the pains of death, or fuch other punishment as the quality or neglect of his offence shall deserve.

Artic. 12.

XV. Again, Chery Captain and all other Officers, Mariners and Souldiers of every Ship, Frigat, oz Meffel of War, hall not in time of any Fight of Engagement withdraw or keep back; but on the other hand, they are to come into the Battle, and engage, and do their utmost endeabour to take, fire, kill, and endamage the Enemy, Pirate of Rebel, and affict and teliebe all other his Confederate Ships; and if they shall probe Cowards, they are to be dealt with as Cowards ought by the Law of Arms, which is to luffer death: But circumstances of things may make alteration of matters, therefore there is added other punishment, as the circumstance of the offence shall deserve, or a Court Marshal think fit. By the word Captain the General or Admiral is not included, but all Flag-Officers and others under them, are within the In milite unius purview of the Statute by the denomination of the word

fors est, in Impe- Captain, &c. and the reason wherefore such Commanratore universo- ders in Chief are not within the Law, is, because the Wearum periculum: unus homo plu- pon of a General is his Truncheon, but of ail other Offi-

ris fuit guam u- cers is the Sword; a General is only to command, and the niversa civitas. rest to execute, for in the latter is the danger only of one clearchus cyre mans life, but in the first is the hazard of all; therefore by dedit consilium, the Law of Arms no General or Admiral in Chief ought to ne ipfe se in pe- expose their person to apparent peril, but in case of a ge-

riculum offerret.

sed inspectorem se pugne gereret; pugnantem enim corpore nil magni efficeret, si vero quid damni acceperit, omnes fe perditurum quos fecum haberet. Polyb. Stra. lib. 2.

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neral overthrow and manifest defeat. Peter Capponi the Famous General for the Florentines belieging Soiana, and encamping on the River Casina, being in a place of danger, extremely industrious about planting his Battery, was shot Guicciard. 1. 3. with a Harquebus, immediately upon which the Siege Aphor. 28. was raised; yet on the other hand, let it be examined where any famous Battle hath been obtained, and the fame was not got, not only by the Conduct, but likewise by the fingle and personal Courage of the General.

There are some offices to be done, even to them from whom you have received an injury; for revenge and punishment must have a measure; and therefore the issues of the Roman Wars were either mild or necessary: now ciero Offic. 1, when killing is just in a just War, according to internal & 2. Justice, may be known by examining the causes or end of the War, which may be for the conservation of Life and Grotius de Jure Members, and the keeping and acquiring of things use- Belli ac Pacis, ful unto life; now in the affaulting of Ships, it happens that one is flain on purpose or without purpose; on purpose can no man be slain justly, unless either for just punishment, as without it we cannot protect and defend our Life, Goods, and Country, &c. That fuch punishment may be just, it is necessary that he who is slain have offended, and that fo much as may be avenged with the punishment of death in the Sentence of an equal Judge. Now we must note, between full injury and meer misfor- Misericordia tune often intercedes some mean, which is as it were com- infortuniis deposed of both, so that it can neither be called the act of liberatascientia one knowing and willing, nor meerly the act of one male agit, non ignorant or unwilling.

This distinction by Themistins is fully illustrated: You justus: And cihave made a difference betwint an injury, a fault, and a ciro hath a fay-mistortune: although you meither fludy Plato, nor read Ari, ing out of Demisfortune; although you neither study Plato, nor read Ari- mosthenes; We stotle, yet you put their Doctrine in practice; for you have must shew not thought them worthy of equal punishment, who from the compassion to beginning perswaded the War, and who afterward were carried those whom with the stream, and who at last submitted to him, that now their own seemed to have the highest power; the first you condemned, the deeds, have next you chastised, the last you pitied. Most certain, to made miserafpare Captives or Prisoners of War, is a command of ble. goodness and equity; and in Histories they are often commended, who when too great a number prove burdenfom

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Scipio Emi- or dangerous, chose rather to let them all go than to flay verthrow of claimed that they should fly that would.

Vide Serran. in reb. Franc. I. & Hen. 2. Thucyd. lib.3. de Bello Gallico. † Dinant in

Germany being taken by afburnt, and the

lianus at the o- them, or detain them, though for Ranfoms; as in the last Flemish Wars with England. So for the same causes, they Carthage, pro- that strike or yield up themselves are not to be slain, (though there is no provision made by Covenant.) In Towns belieged it was observed by the Romans, before the Polybins, vide Ram had smitten the Wall; Cafar * denounceth to the Tacitus Annal. Advatici, he would save their City, if before the Ram had touched the Wall, they yielded; which is still in use in weak Places, before the great Guns are fired; in strong Places, before an Assault is made upon the Walls +; and at Sea, by firing one or two Guns, or hanging out the * Cafar lib.2. bloody Flag, according as the instructions are; however till there be an absolute yielding or quarter cryed, by the Law of Arms, as well as by the above mentioned Article, every Commander and Souldier is to do his utmost to fault, the Town take, fire, kill, and endamage the Enemy, or what soever was razed and may tend thereunto.

Prisoners all put to death. Vide Phil. Comin. lib. 2. cap. 1.

I will defend my Companiof my own Blood, and partake in his danger. Senec. de Ben. 2. 15.

Attic. 13.

XVI. By the Law of Arms, he deferves punishment who doth not keep off force that is offered to his fellow Souldier; and though it hath been conceived, if there be manifest danger, that he is not bound to come in to his relief; for fuch Commanders may prefer the lives in his own Ship before those in another, yet that suffices not; for every Souldier by the Law of Arms, is not only bound to defend, but also to assist and relieve his Companion: on at the cost now Companions are in two respects, either those that are in actual fervice with fuch Souldiers, or those that are not, but only committed to their protection or Convoy, which are to be defended and guarded at the same peril and charge that a fellow Souldier is; and therefore all Ships that are committed to Convoy and Guard, They are diligently and carefully to be attended upon without delay, according to their Instructions, in that behalf: And wholoeber shall be faulty therein, and shall not faithfully perform the same, and desend the Ships and Gods in their Conboy without either diberting to other parts of occasions, of refusing of neglecting to fight in their defence, if they be fet upon or affailed, or running away cowardly, and fubmitting those in their Conboy to pazaro

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bazard and peril, of thall demand or eract any Money or other reward from any Merchant og Matter, foz conbep. ing of any fuch Ships of other Meffels belonging to His Majelty's Subjects, thall be condemned to make reparation of the damage to the Perchants, Dwners, oz others, as the Court of Admiralty hall adjudge, and also be put nifed criminally according to the quality of their offences, be it by pains of death or other punishment, according as thall be adjudged fit by that Court Warfhal.

Protection of Convoys by the Laws of Nations is of a great utility to a Kingdom or State; therefore when violence is offered to those Ships under Convoy, they are not in feris image faid to be done to them, but to those Ships of War under quedam. Leo whose Guard they pass; and therefore when violence is in Adultera offered to fuch, publick revenge is let in, according to poenant conthat of Tacitus, He should provide for their security by a just surgit. Plin. revenge. Now that fuch Ships may not fuffer wrong from fuch Invaders, two ways may be taken by the Convoys; first, by destroying him or them that shall have attempted and committed any Hostile act against any thing under their protection: fecondly, by all ways imaginable endeavour the weakning his or their Force, that he or they may not be able to do any other or further hurt; therefore there is no doubt but vindication to these ends is within the bounds of Equity, though this is no more than private; yet if we respect the bare Law of Nature, abstract from Laws Divine and Humane, and from all not necesfary accidents to things, it is not unlawful whether the fatisfaction or revenge is taken by the Convoy Ships themfelves or the wronged ones under his or their Guard and Protection, feeing it is confentaneous to Nature, that man should receive aid from man; and in this sense may be admitted that faying of Cicero, The Law of Nature is that which comes not from opinion, but innate vertue: Among the examples of it is placed Vindication, which he oppoles to favour, and that none might doubt how much he would have understood by that name, he defines Vindication, whereby, by defending or revenging, we keep off force and contumely from us and ours, who ought to be dear unto us, and whereby we punish offences.

Now those Ships that are not under Convoy, but ingaged in fight, are faithfully to be relieved; and therefore

Etiam bujus res Hift. Nat. 8. 16.

fore if a Squadron shall happen to be over-charged and and distressed, the next Squadron or Ships are to make to the wards their relief and affistance upon a signal given them; which is generally given in the Admirals Squadron by a Pendant on the fore-top-Mast head of any Flag-Ship; in the Vice-Admirals Squadron, or he that commands in Chief in the fecond place, a Pendant on the main top-Maft head, and the Reer-Admirals Squadron the like: but thefe fignals fometimes change, according to the wifdom and resolution of the Admiral. Again, Ships that are disabled by loss of Masts, shot under water, or the like, so as they be in danger of finking or taking, the diffressed Ships generally make a fign by wast of their Jack and Ensigns, and those next to them are bound to their relief; but yet this does not always hold place: for if the distressed Ship is not in probability of finking, or otherwise encompassed with the Enemy, the reliever is not to stay under pretence of fecuring them, but ought to follow his Leader and the Battle, leaving such lame Ships to the Stern-most of the Fleet; it being an undoubted Maxime, That nothing but beating the Body of the Enemy can effectually secure such difabled Ships.

XVII. It is not enough that men behave themselves valiantly in the beating of an Enemy, for that is not all, but the reducing of him into a condition to render right either for damage done, or to render that which is right; which cannot well be done without bringing him to exigences and straits; and therefore if the Enemy, Pirate, or Rebel be beaten, Pone, neither through cowardize, negligence, or difaffection, ought to forbear the pursuit, But that is to and those of them flying, noz ought such either through oowardize, negligence, or dicaffection forbear the affilling of a known friend in biew, to their utmost power, the breach of which subjects the offenders to the pains of death, or at least such punishment as a Court Marshal shall

think fit.

Empires are got by Arms, and propagated by Victory; and by the Laws of War, they that have overcome, should govern those they have subdued. Hence it is, that Generals having compleated a Conquest in a just War, and in chase or otherwise have taken the Ships or Goods of the Enemy, have absolute power over the Lives, Estates, Ships

Artic. 14.

be understood as in the XII. 5. of this Chapter.

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ged and and things that they by force of Arms have acquired by ake to the Laws of Nations.

them; But yet in fuch Conquests where the reeking Sword n by a knows no Law, that is, they are done simpune, without ; in the punishment, (because co-active Judges do grant them n Chief their authority) yet fuch power may be exorbitant from Tacit. 3. Annals p Mast that Rule of Right called Virtue; and though by the vior remedits it thefe Law of War Captives may be flain, yet what Law for quam delitte m and bids not, modesty prohibits to be done. Hence it is, that erant. Generals do often restrain that power of killing; for though fuch Prisoners of War do fight for the maintenance of an unjust cause, and although the War is begun by a folemn manner; yet all acts that have their rife from thence, are unjust by internal injustice, so that they who knowingly do perfift in fighting *, yet ought they not al. * Grot. de Juit ways to be flain, according to that of Seneca: Cruel are Belli ac Pacis, they, fays he t, that have cause of punishment, but have no take flain. measure. For he that in punishing goes further than is cap. A. meet, is the fecond author of injury; and the principal reason why mercy is often shewed, is, for that Souldiers of Fortune offend not out of any hatred or cruelty, but out of duty.

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XVIII. Again, Generals in the measure of killing, look commonly no further than the destruction of those who by force of Arms oppose them; and though Ships or Cities are taken by affault, the which by the Laws of War lubjects every individual to the mercy of the Conquerour, yet Children, Women, Old Men, Priests, Scholars, and Husbandmen are to be spared; the first by the Law of Nature, according to that of Camillus: We have Arms, In Vita Camilla says he, not against that age which even in taking Cities is Spared, but against armed men, and this is the Law of Arms amongst good men; by which we are to note, that by the words good Men, as is observed, we mean the Law of Na- Grotius de Juri ture, for strictly by the Law of Arms the flayers of them Belli ac Pacia, are without punishment.

that many pretences may be found out against men of mature age, but against Intains, calumny it felf can find nothing to fay, as being clearly innocents.

Now that which hath always place in Children that have not attained the use of Reason, for the most part prevails with Women; that is, unless they have committed

lib. 3. cap. 11: who observes, Heroa. in Vita Maximin. fol. 417.

fomething peculiarly to be avenged, or do usurp manly offices, as flinging of stones from the Walls, pouring down burning Pitch, Brimstone, and the like bituminous stuff, firing of Guns, and the like; for it is a Sex that hath nothing to do with the Sword, that are capable of that clemency.

Papin. nullis turba fenes.Vict.

1 Sam. 10.5. &

The like for Old men, who, Papinius observes, are violabilis armis not to be flain; fo for Ministers of Sacred things, even Barbarous Nations have had them in reverence and prefervation; as the Philistins, enemies of the Jews, did to the 1 Sam. 19. 18. Colledge of Prophets, to whom they did no harm: and with those Priests are justly equalled in this respect, they that have chose a like kind of life, as Monks and Penitents, whom therefore as well as Priests, the Canons following in * Lotd coke's natural equity will have spared *: to these are deservedly Common 30. added those that give themselves to the study of good Cap. of Magna Learning and Sciences useful to Mankind, be it in Unicharta, fol. 58. versities, or other publick Schools or Colledges. But yet if any of these be taken in actual Service, they then may receive the common Fate of others. So our King Richard the First having taken the Martial Bishop of Beauvois Prifoner, received a Letter from the Pope, that he should no longer detain in Custody his Dear Son; the King fent the Pope back the Armour wherein he was taken, with the words of Jacobs Sons to their Father, See whether or no this be the Goat of thy Son.

C. de Trenga & Pace.

Leg. execut. C. que res pign.

Pide 2. Inflit. fol. 58. Trin:

De Benefic. 5. 84P. 18.

To these are added Tradesmen, so likewise Merchants, which is not only to be understood of them that stay for a time in the Enemies Quarters, (but of perpetual Subjects) for their life hath nothing to do with Arms, and under 31 E. I. coram that name are also contained other Workmen and Arti-Rige Rot. 127. ficers, whose gain loves not War, but Peace.

> Again, Captives and those that yield are not to be flain, for to spare such is a command of goodness and equity, fays Seneca; however it may so come to pass, that though the Military power may exempt a Prisoner of War from the execution of the Sword, yet it may be out of their power to exempt or discharge a Delinquent or Traitor from the execution of the Magistrate, as if the Fleet were prepared, and the War principally begun for the suppression of such; and the reason of this is, if it should be in the power of one Souldier, who takes a Trai-

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tor Prisoner upon such terms, it would pari ratione be in the power of all to pardon; not that the Article hath no effect, for the Traitor is by that freed from the immediate execution of the Sword : fure it is, that if the yielding be Libertinum inin aperto pralio, methinks absolute pardon is implicitly in gratum in pria the contract; however this is undeniable, that having fervitutem. Foryielded himself Prisoner of War, if he escape he for ever tescue cap. 45. loses the benefit of the promise. Nor are Hostages to be destroyed, according to that of Scipio, who said : He would Liv. lib. 28. not shew his displeasure on harmles Hostages, but upon those The same saich that had revolted, and that he would not take revenge of the fulian in Niceunarmed, but the armed Enemy. 'Tis very true by the Law of Arms, if the Contract be broke for which they became Holtages, they may be flain, that is, the flayer is without punishment: but yet some conceive the slayer is not with- Grotius de Fure out fin, for that no fuch Contract can take away any mans Belli ac Pacis, life, that is, I suppose an Innocents life; but without lib. 3. cap. 11. controversie, if those that become Hostage be or were before in the number of grievous Delinquents, or if afterwards he hath broken his Faith given by him in a great matter, the punishment of such may be free from injury.

XIX. Where offences are of that nature as they may feem worthy of death, as mutiny, and the like, &c. it will be a point of mercy, because of the multitude of them to remit extreme right, according to that of Seneca: The 2.de Iracap. 10. severity of a General shews it self against particulars, but par- tis peccatur indon is necessary when the whole Army is revolting: what takes ultumed. Magis away anger from a wife man? the multitude of Transgressors, monendo quam Hence it was, that casting of * Lots was introduced that minando : fic ttoo many might not be subjected to punishment.

dine peccantium, severitas autem exercenda est in peccata paucorum. Vide Gailium de Pace publ. lib. 11. cap. 9. 36. * Vide Grot. lib. 3. cap. 11. 5. 17.

However all Nations have generally made it a standing t Victor de Ju-Rule in the punishment of Mutineers, as near as possible, to " Belli n. 55.

hunt out the Authors, and make them examples +. And therefore by the 15. Article, If any man at any Articles. time, when Service of Action is commanded, that prefume to flop or put backwards or discourage the said perbice and Action, by pretence of Arrears of wages, or upon any pretence of wages whatfoeber, they are to futer death; and indeed the same ought to be without mercy,

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by how much the more they may raise a Mutiny at a time when there is nothing expected but Action, and the flewing the most obsequious duty that possibly may be; the breach of which may occasion the damage of the whole Fleet, and being of fuch dangerous confequence, ought feverely to be punished. Gustavus Adolphus upon his first entrance into Germany, perceived how that many Women followed his Souldiers, some being their Wives, and some wanting nothing to make them fo but Marriage, yet most passing for their Landresses, (though commonly defiling more than they wash) the King coming to a great River, after his Men and the Waggons were passed over, caused the Bridge to be broken down, hoping fo to be rid of these feminine impediments; but they on a sudden lift up a panick shriek which pierced the Skies, and the Souldiers hearts on the other side of the River, who instantly fell into mutiny, vowing not to stir a foot further except with Baggage, and that the Women might be fetched over, which was done accordingly; for the King finding this ill humour fo generally dispersed in his men, that it was dangerous to purge it all at once, fmiled out his anger for the present, and permitted what he could not amend. So likewise the uttering of any words of Sedition or Buting, or the endeabouring to make any mutinous Affemblies upon any pretence what soeber, is made death: And the very Concealers of any traiterous and mutinous practices, defigus or words, or any words spoken by any to the prejudice of Wis Wajelly or Gobernment, or any words, practices, or designs tending to the hindrance of the Service, and shall not rebeal them, subject them to fuch pains and punishments as a Court Warshal shall think fit. And whereas in any of the offences committed against any of the Articles for the Government of any of His Majesties Ships of War, within the narrow Seas, wherein the pains of death are to be inflicted, execution of such Sentence ought not to be made without leave of the Lord Admiral; this of Mutiny is totally excepted, for fuch may be executed immediately.

Zrid. 20.

Attac. 19.

Metico 34

XX. It is not lawful for Princes or States to make of their Enemies Traitors, or cause them to desert the Service of their Prince, or to bring over their Ships, Ordnance, Provisions or Arms; for as it is not lawful for any Subject

Grotius de Fare Belli as Pacis, 6.3. C. I. S.

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to do the fame, fo neither to tempt him; for he that gives a cause of sinning to another, sins also himself; but if a man will voluntarily without any other impulse than his own, bring over the Ships or Armies, or deferts the Ser. * Leg. Transfug. vice of his Prince to serve another, this, though a fault Polyb.in except. in the deserter, is not in the receiver : We receive a Fuge- Legat. 9.28.24. tive by the Law of War (faith * Celfus) that is, it is not against Menand. Protethe Law of War to admit him, who having deferted his Princes clor idem nos part, elected his Enemies; nor are fuch to be rendred, ex- docet. cept it shall be agreed, as in the Peace of † Lewis the 110.00ms to 110.00ms to 110.00ms Eleventh. However such fort of Gamesters, if caught, are to be feverely punished; and therefore it is provided, That if any Sea-Captain, Officer, og Seaman fball betrap Artic. 16.1 bis truft, oz turn to the Enemp, Pirate oz Kebel, oz run away with their Ship oz Dzonance, Ammunition oz 1020= biston, to the weakning of the Service, or yield the came up to the Enemp, Pirate oz Rebel, thep shall be punished with death; so likewise, If any shall desert the Artic. 17. Service oz the Employment, which thep are in on Shipboard, or shall run away or entice any other so to do, they are subject to the like pain of death. And by the Law of 9. c. quando li-Nations, fuch deserters that run away from their Colours ceat, 1.2. in reps or Fleet before Peace proclaimed and concluded, all per-majestatis & fons of that Prince from whom they fled, have a right in Publicos hoftes dulged to them to execute publick revenge.

omnis homo miles. Vide Grot.

lib. 1. cap. 5. Vide Hetley Rep. 235. 1 H. 7. cap. 1. 3 H. 8. cap. 5.

XXI. By the Laws of Nations, Spies may be fent to Liv. l. 2. c. 3. view and furvey the Enemies Force, Fleet, station, and S. ult. ad Leg. make discovery of whatsoever may give advantage to the Corn. de Sicar. persons sending, as is mentioned above; but being deprehended they are put to death; and therefore if any Artic. 18. person spall come from oz be sound in the nature of Spies. to bring any feducing Letters or Meffages from any Enemp oz Kebel, oz spall attempt oz endeabour to cozrupt any Captain, Micer, Wariner, oz other of the Paby oz Flet, to betrap bis oz their truft, oz pield up any Ship oz Ammunition, or turn to the Gnemy or Mebel, be thall be punished with death.

XXII. Souldiers and Mariners owe all respect and duty to their Superior Officers; and therefore when they are in anger, they ought to avoid them; but above all not to

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quarrel with, or give them any provoking language: and therefore by the Law of Arms, a Souldier who hath relifted his Captain, willing to chastise him, if he hath laid hold on his Rod, is cashier'd, if he purposely break it, or laid * Leg. milit.D. violent hands upon his Captain, he dyes: * And by the dere milit. Ru- Laws of England, if any person shall presume to quarrel fus Leg. militar. with his Superior Officer, he shall suffer severe punishment; and if he strikes him shall fuffer death, or other-

wife as a Court Marshal shall adjudge the matter to de-

+ Artic. 21.

cap. 15.

ferve +. " XXIII. And though Mariners and Souldiers may have just cause of complaint, as that their victuals or provisions are not good, yet must they not mutiny or rebel, whereby to distract or confound the whole Crew, but must make a civil and humble address to their Commander, that the same may be amended; and if the case be such, that the Commander cannot redress the same, by going to Port

Bacon's Maxim fol. 17. Privis publicam.

to supply the exigencies, without detriment of the fleet Legium non va- (as if ready to engage, or the like) they must like Men and let contra rem- Souldiers bear with the extremity, confidering that it is

Artic. 234

better that some men should perish, nay, the whole Crew in one Ship, than the whole Fleet; nay, perhaps the whole Kingdom be deftroyed: And therefore if any in the Fleet find cause of complaint of the unboolsomness of bis Miduals, ozupon other juft ground, be hall quietly

make the same known to bis Superioz, or Captain, or Commander in Chief, as the occasion may deferbe, that fuch present remedy may be had, as the matter may require; and the faid Superioz oz Commander is to cause the same to be presently remedied accordingly; but no person upon any such or other pretence shall privately at-

tempt to stir up any disturbance, upon pain of such seyere punishment, as a Court Marshal shall think fit to inflict:

Artic. 24.

XXIV. And as the Law doth provide that there be no waste or spoil of the Bings probision, or imbeglement of the fame; to likewife that care be taken, the Ships of War neither through negligence or wisfulness be firand. ed, fplit og bagarded, upon febere penalties. In Fights and when great Fleets are out, there are generally instructions appointed for all Masters, Pilots, Ketches, Hoyes, and Smacks, who are to attend the Fleet, and to give them

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potice of the Roads, Coasts, Sands, Rocks, and the like. and they have particular stations allotted them, and Orders given, that if they shall find less water than such a proportion, they then give a fignal as they are directed to give, and continue their fignal till they are answered from the Capital Ships.

But in time of Fight they generally lay away their head from the Fleet, and keep their lead; and if they meet with fuch a proportion of water as is within their directions, they are to give such signal as they receive Orders for, and stand off from the danger; but the wisful burn - Artic. 27. ing of any Ship or Magazine-flore of Powder, Shirboat, Ketch, Bop oz Wellel, oz Tackle oz Furniture thereunto belonging, not appertaining to an Guemp of Mebel,

Mall be punished with death.

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XXV. There are other faults often committed by the Crew, the which the Law does punish, as a quarrelling on Ship board, ufing proboking speches tending to make quarrel oz difturbance 2, Burtbers, wil ul hilling of any Anic 28. Man b, Mobberg, Theft's, and the unnatural fin of 30. 4 dt. 28. domp and Buggerp, committed with Ban of Beatt: att art. 29. which, and all other faults and misdemeanours are punished with death, or according to the Laws and Customs in such cases used at Sea; and when any persons have Artic. 33. committed any of the offences particularly mentioned in the Statute of 13 Car. 2. Cap. 9. and contained in the Articles or any others, and for the which they shall be committed, the Probott Wartal is to take them into cullody, Artic 31. and not fuffer them to escape, and all Officers and Seamen are to be aiding and affifting to Officers for the detecting and apprehending of offenders.

Touching the punishments that the Roman Generals used to their Souldiers, when they were at a Court Marshal found faulty, they were commonly proportioned according to the offence committed: Sometimes they were easic, of which fort were those which only branded the Souldier with diffrace; others were those that came heavy on the Person or Body. To the first belonged a shameful discharge ing or cashiering a Mariner or Souldier from the Army, Ignominiofa and generally lookt on as a matter of great difgrace, which diniffe. punishment remains at this day for offences as well in Eng. land, as in most parts. A second was by stopping of their

Pay:

Fraudat. Ripen- Pay; fuch Souldiers which fuffered this kind of mulch. dii. Rosin. Ant. were said to be Ere diruti, for that Es illud diruebatur Rom. 1.10.c.25. in fifcum, non in Militis sacculum; the which is and may at this day be inflicted, especially on such as shall wilfully spoil their Arms, and for the like fort of offences. A third

Censio Hastaria. was a Sentence enjoyned on a Souldier to resign up his Spear; for as those which had atchieved any Noble Act. were for their greater Honour Hasta pura donati, so others for their greater difgrace were inforced to refign up that Military Weapon of Honour. A fourth fort of punishment was, that the whole Cohort, which had loft their Banners or Standards, either in the Fields or at Sea, were inforced to eat nothing but Barley-bread, being deprived of their allowance in Wheat, and every Centurion in that Cohort had his Souldiers Belt or Girdle taken from him, which was no less difgrace among them than the degrading (among us) one of the Order of the Garter: for petty faults they generally made them stand bare-footed before Godwin Antiq. the General's Pavilion, with long Poles of ten foot in

Rom. fol. 127.

length in their hands, and fometimes in the fight of the other Souldiers to walk up and down with Turffs on their necks, and fometimes carrying a Beam like a Fork upon their shoulders round the Town. The last of their punishments was, the opening of a Vein or letting them blood in one of their arms, which generally was inflicted on

them who were too hot and bold.

The great Judgments, were to be beaten with Rods, which was generally inflicted on those who had not discharged their Office, in the fending about that Table called Teffera, wherein the Watch-word was written, or those who had stoln any thing from the Camp, or that had forfaken to keep Watch, or those that had born any false Witness against their Fellows, or had abused their bodies by Women, or those that had been punished thrice for the fame fault, fometimes they were fold for bondflaves, beheaded and hanged. But the last which was in their mutinies, the punishment fell either to Lots, as the tenth, twentieth, and fometimes the hundredth man, who were punished with Cudgelling; and with these punishments those in England have a very near affinity, as cleanfing the Ship, losing Pay, ducking in the Water, beaten at the Capfons head, hoifted up the main Yard end with

Lipf. de milit. Rom. lib. 5. Dialog. 18.

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with a shovel at their back, hanged, and shot to death, and the like.

XXVI. The Admiral may grant Commissions to inferiour Vice-Admirals or Commanders in Chief of any Squadron of Ships, to assemble Court Marshals, consisting of Commanders and Captains, for the Tryal and Execution of any of the offences or missemeanours which shall be committed at Sea; but if one be attainted before them, the same 37 H. 6. fol. works no corruption of Blood or forfeiture of Lands, nor 4.5 can they try any person that is not in actual Service and Pay in His Majesties Fleet and Ships of War. But in no 13 car. 2. case where there is Sentence of death can the execution of cap. 9. the same be without leave of the Lord Admiral, if the same be committed within the narrow Seas; yet this does not extend to mutiny, for there in that case the party may be executed presently.

All offences committed in any Voyage beyond the narrow Seas where Sentence of death shall be given upon any of the aforesaid offences, execution cannot be awarded nor done, but by the Order of the Commander in Chief of that Fleet or Squadron, wherein Sentence of death was

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XXVII. The Judge Advocate hath power given by the words of the Statute, to administer an Oath in order to the Examination or Tryal of any of the offences mentioned in the Statute of 13 Car. 2. Cap. 9. and in his absence the Court Marshal hath power to appoint any other person to administer an Oath to the same purpose. This Statute enlarges not the power and jurisdiction of the Admiral any further than only to the above-mentioned offences in any case whatsoever, but leaves his authority as it was before the making of this Statute. Nor does it give the Admiral any other or further power to inquire and punish any of the above-mentioned offences, unless the same be done upon the main Sea, or in Ships or Vessels being and hovering in the main stream of great Rivers only beneath the Bridges of the same Rivers nigh to the Seas, within the Jurisdiction of the Admiralty, and in no other place 15 R. 2. cap. 3. whatfoever.

XXVIII. As Souldiers and Mariners for the honour and fafety of the Realm, do daily expose their lives and limbs, so the Realm hath likewise provided for them, in case they

Stat. 43 Elie.

they furvive and should prove disabled or unsit for Service, a reasonable and comfortable maintenance to keep them; the which the Justices of the Peace have power yearly in their Easter Sessions to raise by way of a Tax, for a weekly relief of maimed Souldiers and Mariners.

The maimed Souldier or Mariner must repair to the Treasurer of the County where he was prest, if he be able to travel; if he be not, then to the Treasurer of the County where he was born, or where he last dwelt by the space of three years; but if he proves unable to travel, then to the Treasurer of the County where he lands.

He must have a Certificate under the chief Commander, or of his Captain, containing the particulars of his hurt

and fervices.

The allowance to one not having been an Officer, is not to exceed ten pound per annum;

Under a Lieutenant _____ 15.3
A Lieutenant _____ 20.3

Till the Mariner arrives at his proper Treasurer, they are to be relieved from Treasurer to Treasurer, and when they are provided for, if any of them shall go a begging, or counterfeit Certificates, they shall suffer as common Rogues, and lose their Pensions: Over and above this provision, His Sacred Majesty hath provided a surther suppliment for his maimed Mariners and Souldiers disabled in the Service, which is issued out of the Chest at Chatham, and constantly and duly paid them; and for his Commanders, Officers, and others that served aboard, he, of his Royal Bounty, hath given to those that bear the character of War, and purchase the same by their sidelity and valour, a pious Bounty called Smart-Money, over and above their Pay.

The greatest assurance of a Fleet is in the prudent Government of the Admiral; the greatest weakening of it is by discontent, which generally proceeds from two things, want of good Victuals at Sea, and Pay when come home, these are the poor Mariners Aqua vita; but want of them is such an Aqua fortis as eats through all manner of duty and obedience: that Prince that expects to be well served and obeyed, (especially by an English man) must take care that he suffer not a greater power in his Fleet than his own; this Commander is Necessity, which breaks disci-

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pline at Sea, and creates discouragement at Land. XXIX. The wisdom of the Romans was mightily to be

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commended, in giving of Triumphs to their Generals after Vide Salmuth. their return, of which they had various forts; but the in Pancir. Leg. greatest was when the General rid in his Chariot, ador. Terum depred. ned and crowned with the Victorious Laurel, the Senators Dion. Haliwith the best of the Romans meeting him, his Souldiers carnas lib s. (especially those who by their valour had purchased Coronets, Chains, and other Enfigns of reward for their conduct and courage) following him: but what alas! could these to the more sober represent any other but horrour. fince the centers from whence the lines were drawn. could afford nothing but death, flaughter, and defolation on those who had the souls and faces of men; and if it were possible, that that Blood which by their Commissions was drawn from the sides of Mankind, and for which they made those Triumphs, could have been brought to Rome, the same was capable of making of a Source great as their Tiber; but Policy had need of all its Stratagems to confound the Judgment of a Souldier by excessive Praises, Recompences, and Triumphs, that fo the opinion of Wounds and wooden Legs might raife in him a greater esteem of himself, than if he had an entire body. To allure others, fomething also must be found out handsomly to cover wounds and affrightments of death; and without this Cafar in his Triumph, with all his Garlands and Musick, would look but like a Vi-Etime; but what forrow of heart is it to fee passionate man, a ray of Divinity, and the joy of Angels, scourged thus with his own Scorpions? and fo fondly to give himfelf Alarms in the midst of his innocent contentments, as they of Holland but yesterday in the midst of their Traffick and Recreations did (by the denying His Sacred Majesty his Right, even that Right of the Flag which his Ancestors had with fo much Glory acquired) pull on their heads a War, which that mighty Republick by their greatest industry and wisdom could not in the Revolution of almost eight years be able to quell. The cholerickness of War (whereby the luftful heat of so many hearts is redoubled) stirs up the Lees of Kingdoms and States, as a Tempest doth weeds and flimy fediment from the bottom to the top of the Sea, which afterwards driven to the shore, together

Of the Mabal Military part.

gether with its foam, there covers Pearls and precious Stones: and though the Cannon should seem mad by its continual siring, and the Sword reeking hot by its daily slaughters, yet no good man doubts but they, even they, shall weather out those storms, and in the midst of those merciles instruments find an inculpata Tutela, who love Justice, exercise Charity, and put their trust in the Great Governour of all things.

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CHAP. XIV.

Of Salutations by Ships of War, and Werchant Wen.

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> II. Of the same paid in all Ages as an undoubted mark of Soveraignty of this Empire.

> III. Of those Seas where this Right is to be paid to the King of England's Flag.

> IV. In what manner the King of England holds this Right, and by whom to be paid.

V. Of those that shall neglect or refuse to do the same, bow punisht and dealt withal.

VI. Where His Majesty of Great Britain's Ships are to firike their Flag, and where not.

VII. Of the faluting of Ports, - Cafiles, Forts, how the same is to be done, and on what terms.

VIII. Of Ships of War their faluting their Admiral and Commanders in Chief.

IX. Of Ambaffadours, Dukes, Noblemen, and other Perfons of Quality, and landing.

1. Of Salutation, bow esteemed by | X. The Admiral of any Foreign Nation, if met withal, how to be faluted and answered.

> XI. Of the Men of War or Ships of Trade of any Foreign Nations, faluting His Majesty's Ship of War, bow to be answered.

> XII. Of the faluting of His Majefty's own Forts and Castles, and when the Salute ceafes.

XIII. Of the objection that feems to be made against the necessity of such Salutations.

XIV. why Kingdoms and States attribute the effects, not the cause of Rights, to prescription.

XV. That Kingdoms and Republicks ought not to be disordered for the defect of Right, in presumption, and the objection in the XIII. S. answered.

XVI. The inconveniency of war, and the causes justifying the same.

XVII. Of the canfes not justifiable in War.

how to be faluted coming aboard | XVIII. Of Mederation, and the utility of Faith and Peace.

S reforming Powers in all Ages have made it their chiefest work to take down the great Colossuses, and whatever elfe might be obumbragious in the excrescences of Civil Pomp; fo we had fome in this Age, who, by a new Art of levelling, thought nothing could be rightly mended, and they planted, unless the whole piece ravelled out to the very end, and that all intermediate greatness between Kings and them, should be crumbled even to the dust, where all lying level together as in the first Chaos, Spades ought even to be put into the hands of those

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those who were heretofore adorned with Scepters, all outward tokens of honour and esteem, which even from the first institution of Society seemed by an uninterrupted stream to be continued down to Posterity, (even amongst the most barbarous Nations) was by them totally denied; the Hand, the Hat, the Knee (being no other but outward signs of an inward respect) being esteemed equal with Idolary; but that unhappy brood, to whom whatsoever was crooked seemed straight, and what was dark to them appeared light, are now not to be accounted men; with whom the question may admit of a debate whether Salutation is innocent, necessary, and praise-worthy, since nothing of reason can be found in the foundation of their Religion, Honesty, or Conscience,—— Therefore this Discourse is directed to men.

II. First, it is evident by what hath been said, that the British Seas before the Roman Conquest, ever belonged to the Isle of Great Britian, they always claiming and enjoying the sole Dominion and Soveraignty of the same, which afterwards accrued to the Romans by Conquest, and from them translated with its Empire to the succeeding Saxon, Danish, and Norman Kings, and in the Reigns of those Princes there were always some marks of Soveraignty paid, wherein the right of the same was evinc't and acknowledged.

III. Now those Seas in which this Salutation or Duty of the Flag are to be paid, are the four circumjacent Seas, in which all Vessels whatsoever are to pay that Duty, according to the Custom of the same, and the Ordinance of King John. How far this Right is payable, appears in the fourth Article in the Peace made lately between His Majesty and the States General of the United Provinces, in these words:

That whatever Phips or Messels belonging to the said United Provinces, whether Messels of War or other, or whether single or in Flexes, wall meet in any of the Deas from Cape Finisterre to the middle point of the Land Van Staten in Norway, with any Ships or Wessels belonging to his Pajesty of Great Britain, whether those Ships be single or in great number, if they carry his Pajesty of Great Britain's Flag or Jack, the asgressis Dutch Wessels or Ships shall strike their Flag and low their Cop.

Top-fail, in the fame manner, and with as much respect as bath at any time, of in any place, ben formerly peadifed towards any Ships of his Majefty of Great Britain, of his Predecestors, by any Ships of the States General, or their Pzedecessozs.

IV. Now, his Majesty holds not this Salutation or Refpect, by virtue of the League or of the Article, but as the same is a Right inherent to the Empire of Great Britain; and therefore in the first part of the Article it is declared

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Abat the afozefaid States General of the United Probinces, in due acknowledgment on their part of the ming of Great Britain's KIGH T to have his Flag respected in the Seas bereafter mentioned, shall and do declare, and agree-

Now this Right extends and subjects all Nations whatfoever that shall pass through those Seas, and between those places meeting with any of his Majesties Ships of Selden Mayes War, bearing his Flag, Jack, or Cognizance of Service, cap. 24. to strike their Top-sail, and take in their Flag in acknowiedgment of his Majesties Soveraignty in those Seas; and if any shall refuse to do it, or offer to refust, they may be compelled vi, manu & forti, for his Majesties Honour is by.

no means to receive the least diminution.

V. If therefore any of his Majesties Subjects should be fo negligent or forgetful to pay that obeifance, when it may be done without loss of the Voyage, they are to be feized on, and brought to the Flag, to answer the contempt, or else the Commander may remit the Name of the Ship, Commander or Master, as also the place from whence, and the Port to which she shall be bound, to the Admiral; however before the is difmift. The must pay the charge of the that her negligence or forgetfulness occasioned, and afterwards may be indicted for the same, and severely punished.

VI. In his Majesties Seas, none of his Ships of War are to strike to any; and in no other part is any Ship of his Majesty to strike her Flag or Top-sail to any Foraigner, unless fuch foraign Ship shall have first struck, or at the same time have struck her Flag or Top-sail to his Majesties

VII. But if any of the King of England's Ships of War fhall

shall enter into the Harbour of any Foreign Prince or State, or into the Road within shot of Cannon of some Fort or Castle, yet such respect must be paid, as is usually there expected, and then the Commander is to fend ashore to inform himself what return they will make to his Salute; and that if he hath received good affurance, that his Majesties Ships shall be answered Gun for Gun, the Port is to be faluted, as is usual, but without assurance of being answered by an equal number of Guns, the Port is not to be faluted: And yet in that very respect before the Port is to be faluted, the Captain ought to inform himfelf, how Flags (of the fame quality with that he carries) of other Princes have been faluted there, the which is peremptorily to be infifted on, to be faluted with as great respect and advantage as any Flag (of the same quality with the Captains) of any other Prince hath been faluted in that place.

VIII. A Captain of a Ship of the second Rate, being neither Admiral, Vice-Admiral, nor Reer-Admiral, at his first coming and saluting his Admiral or Commander in Chief, is to give eleven Pieces, his Vice-Admiral nine, and his Reer-Admiral feven, and the other proportionably less by two, according to their Ranks; but the Commander or Captain of a Ship is not to falute his Admiral or Commander in Chief, after he hath done it once, except

he hath been absent from the Flag two months.

IX. When a Ship of the second Rate shall carry any Ambassadour, Duke, or Nobleman, at his coming aboard, he is to give eleven Pieces, and at his landing fifteen; and when he shall carry a Knight, Lady, or Gentleman of Quality, at their coming aboard he is to give feven, and at the landing eleven; and the other Ships are to give less by two, according to their Ranks and number of

X. When an Admiral of any Foraign Nation is met with, he is to be answered with the like number by all the Ships he shall salute; if a Vice Admiral, the Admiral is to answer him with twelve less; but the Vice-Admiral and Reer Admiral, and as many of the rest as he shall falute, shall give him the like number: if a Reer-Admiral, then the Admiral and Vice-Admiral to answer him with two less; but if he shall salute the Reer Ad-

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miral or any other, they are to answer him in the like number.

XI. When a Man of War or Merchant Man of another Nation, or of our own, falute any of the King's Ships, he

is to be answered by two less.

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XII. When any of the Captains of his Majesties Ships shall have occasion to falute any of the King's Castles, he is to give two Guns less than they are directed to give upon faluting their Admiral or Commander in Chief, as aforesaid: But this extends only to time of Peace: for if War is begun, no Guns ought to be fired in Salutes, unless to the Ships or Castles of some Foreign Prince or State in amity.

XIII. Those duties or obligations being laid on Commanders, confift of two parts; the one is that ancient prescription, which the Crown of England claims by virtue of the Soveraignty of that Empire; the other is but that respect which is paid as visible marks of Honour and Esteem, either to Kingdoms or Persons publick or private. to whom these several Commands are to be observed; and yet in these which are both innocent and harmless of themselves, we want not those, who being empty of all that may be called good, want not malice to start up words, Wherefore should the lives of men, even Christian men, be exposed to death and slaughter for shadows (as they call them) the Right of Salutation or Complement being no other in their opinion.

XIV. Admitting therefore that the evidence of original Compacts and Rights stand at such remote distances from us, that they are hardly difeernible, and that the principle of Civil things, as well as Natural, is fought for in a Chaos or confusion; so that the evidence of ancient facts vestigia nulla retrorsum, there being no infallible marks of their preexistence (one step doth so confound and obliterate another) and that time it felf is but an imagination of our own, and intentional, not a real meafure for actions, which pass away concomitantly with that measure of time in which they were done, for which reafon we talk of ancient things, but as blind men do of colours: Notwithstanding prescription is supposed by most to hold out fuch an evidence, that as they fay, it ought cote Comme to filence all Counterpleas in all Tribunals, and by the on Littleten,

prefent fol. 25

Di Salutations.

present allowance which is indulged to it, it either proves a good or cleanses a vitiated Title; and hath this power in the Civil constitution of the World, that for quietness sake what it cannot find, we grant it a power to make.

And if we examine all this strictly at the two great Tribunals, the external and the internal, and argue the Jus of it, as Statesmen and Lawyers do, we can then raise the argument of it no higher in the external or temporal Court, than only this ____ That it is very convenient it (hould have the effects of Right, lest Properties and Dominion of things (hould be uncertain, and the apparent negligences of time: Owners (hould be punished, and Controversies have a speedy end: States looking more after publick repose and quiet than after strict vertue; and more after those things which are ad alterum, than that which concerns a mans own felf; for, fay they, The Gods look well enough after their own injuries: States meddle not fo much with great Prodigalities as in petty Larcenies, our chiefest Liberty, Priviledges, or Prerogative in this World, consisting only in an uncontrowable Right, which we have to undo our selves, if we please. Certainly if we plead at the other Tribunal, as conscientious Lawyers; we must give our ultimate resolution out of that Law, Que inciditur non are, sed animis: which is not engraved in Tables of Brass, but in the Tables of our Souls; for the Rules of Law tell us, Que principio vitiantur, ex post facto reconvalescent, and that prescription or usu-caption (which is but the lapse of so much time) hath the power to make Wrong a Right; yea, to change the morality of an action, and turn quantity into quality: upon the refult of all which taking for granted, what those stubborn people do hold, that instead of being a right, or a certain cause or proof of it, it only makes a shadow or an opinion of right.

XV. And when we have taken those people by the hand, and with eagerness run with them to the very bottom and end of the line, and there find nothing, we are but in Pompey's astonishment, when after his Conquest of Ferusalem, having with such reverence and curiosity visited the Sanctum Sancturum, and found nothing there but a pair of Candlesticks and a Chair, in

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which there was no God fitting; yet for all this mistake, he would not (as Fosephue faith) disorder or rob the Temple, which he took by force of Arms, because the very opinion of Religion hath something of Religion; (which made Machiavel's Jacob accept of Laban's Oath by an Idol) fo ought not we Discourses, for defect of giving the causes of the inception of Prescription, or of the Right in Prescription, disorder a State, or be the occasion of setting of two Nations at enmity; nay, though in conscience we are satisfied that it contains but the opinion or shadow of Right: And as to the involving the lives of the innocent, there is no fuch thing in the matter, for there is not required any thing which they do not owe, nor are they defigned to death; but if the cause be such, that they that are innocent must perish, that is, be exposed to death by their Rulers, because they obstinately will not yield that which is right, but will involve the lives of their innocent Subjects by force, to defend that which is wrong, fuch guilty Governours must answer for the defect of their own evil actions: on the other hand, there can be no doubt made. but he that hath an undoubted right, being a Soveraign, the Subjects partake in the same, and the indignity offered to him, they immediately become partakers in the fuffering, for the fatisfaction of which they may, yea, are obliged both by the Law of God and Nations to feek reparation (if their Prince shall command) vi, manu & forti, by the hazard of their blood and lives.

XVI. On the other hand, as War introduces the greatest of evils, viz. the taking away of mens lives, and that which is equivalent to life; fo right Reason and Equity tells us, that it ought not to be undertaken without the greatest cause, which is the keeping of our lives, and that without which our lives cannot be kept; or if they should be kept, yet they would not be of any value to us, feeing there may be a life worse than death, even Captivity; wherefore as we are forbidden to go to Law for a little occalion, fo we are not to go to War but for the greatest. Now those things that are equivalent to a mans life, are fuch to whom Almighty God appointed the same equal punishment as to murdeters, and such were breakers into Houses, breakers of Marriage-fidelity, Publishers of false Religion, and those who rage in unnatural lusts; and the How-

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However, before mens Persons or Goods are to be invaded by War, one of these three conditions is requisite.

r. Necessity, according to the tacite contract in the first dividing of Goods, as hath been already observed.

2. A Debt.

3. A mans ill merits, as when he doth great wrong, or

takes part with those who do it.

Against which if any thing is committed, War may be commenc't, nor is the same repugnant to the Laws of Nature; that is, whether the thing may be done not unjustly, which hath a necessary repugnance to the rational and focial Nature; amongst the first Principles of Nature, there is nothing repugnant unto War; on the other hand there is much in favour of it, for both the end of War, the conservation of Life and Members, and the keeping and acquiring of things useful unto life is most agreeable to those principles: and if need be, to use force to that purpose is not disagreeable, since every Living thing hath by the gift of Nature strength, to the end it may be able to help and defend it felf. Besides, Reason and the nature of Society inhibits not all force, but that which is repugnant to Society, that is, which deprive th another of his right; for the end of Society is, that every one may enjoy his own; this ought to be and would have been, though the Dominion and Property of Possessions had not been introduced, for Life, Members, and Liberty, would yet be proper to every one; and therefore without injury could not be invaded by another: to make use of what is common, and spend as much as suffices Nature, would be the right of the Occupant, which right none could without injury take away. And this is proved by that Battle of Abraham with the four Kings, who took Arms without any Commission from GOD, and yet was approved by him; therefore the Law of Nature was his Warrant, whose Wisdom was no less eminent than his San-Ctity, even by the report of Heathens, Berofus and Orpheus; nor is the same repugnant to the Hebrew Law or Gospel, ac Pacis, lib. 1. as the fame is most excellently proved by the Incomparable

* de Jure Belli tap. 1.

Grotius *.

XVII. On the other hand, the fear of uncertain danger, as building of Forts, Castles, and Ships, and the like, though the former be on Frontiers; the refusing of Wives (when ther may Tac beca 19, veri thin

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(when others may be had) the changing of Countries either barren or Morish for more fertile or healthful, which may justly be done: as in the case of the Old Germans, as Tacitius relates: so likewise to pretend a Title to a Land, because it was never found out or heard of before, that is. if the same be held by a People that are under a Government; nay, though the Government be wicked or think amis of GOD, or be of a dull wit; for invention is of those things that belong to none; for neither is Moral Virtue, or Religious, or Perfection of Understanding required to Dominion; but yet if a new Place or Land shall victor, de ind. be discovered, in which are a People altogether destitute rel. 1. n. 31. of the use of Reason, such have no Dominion, but out of Charity only is due unto them what is necessary for life; for fuch are accounted as Infants or Mad-men, whose right or property is transferred, that is, the use of the same, victor. de Jure according to the Laws of Nations; in fuch case a charitable Belli n. 5, 6, 7, War may be commenc't.

XVIII. To prevent all the fad calamities that must inevitably follow the ungoverned hand in War, Faith must by all means be laboured for; for by that, not only every Commonwealth is conferved, but also that greater Society even of Nations, that once being taken away, then farewel Commerce, for that must be then taken away from man; for Faith is the most Sacred thing that is seated in the breast of man, and is so much more religiously to be kept by the Supreme Rulers of the World, by how much more they are exempted from the punishment of their fins here than other men: take away Faith, and then man to man would be (as Mr. Hobbs observes) even Wolves; and the more are Kings to embrace it, first for Conscience, and then for Faith and Credit sake, upon which depends the Authority of their Government. Ambassadours of Justinian addressed their Speech to Chof- Procopius Proroes after this manner: Did we not fee you here with our own fic. 2. eyes, and pronounce these words in your ears, we should never have believed that Chosroes the Son of Cabades, would bring his Army, and enter forceably into the Roman bounds, contrary to his League, the only hope left to those that are afflicted with War; for what is this, but to change the life of men into the life of wild heafis? Take away Leagues, and there will be eternal Wars, and Wars without end will have this effect, to

Df Salutations.

put men besides themsclves, and divest them of their Nature. If then a safe Peace may be had, it is well worth the releasing of all or many of the injuries, losses, and charges, according to that in Aristotle: Better it is to yield some of our goods to those that are more potent, than contend with them, and lose all; for the common chances of War must be considered, which if so, the scope of the principal part of this First Book may be avoided, and we let into the peaceable tract of Trassick and Commerce.

The end of the First Book.

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BOOK II.

CHAP. I.

Of the various Rights and Obligations of Owners and Partners of Ships in Cales private.

I. Of Navigation in general.

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II. Of Owners their several powers over those Vessels they are Partners

III. Where Ships are obliged to make a Voyage before they can be fold; and what may be done when part protest against a Voyage.

IV. The Master how brought in by the Owners, and the reason why in such a manner.

V. Where the Owners ought to be repaired for the Damages of the Master.

VI. where Ships broke in pieces determine the Partnership as to the Vessel, and where not.

VII. Where a Ship shall be the Builders, and where only his whose Materials she was crested with.

VIII. where Property of the Veffel altered changes not that of the Boat.

IX. A Ship for the act of Piracy becomes forfeited; yet if bona fide fold, where the Property may be questioned,

X. Monies borrowed by the Master, where the same obliges the Owners, and where not.

XI. Where he that obtains an unlawful possession of a Ship, shall answer the full Freight to the Owners.

XII. And where the Owners shall have their Freight, though they lose their Lading.

XIII. Where a Ship may become a Deodand, and where not.

XIV. How recoverable by the Laws of England.

I. In the precedent Book having observed something of the Rights of Persons and of Things in a state of Nature, and how necessarily they came at first to be appropriated, and how equitably they are now continued in the possession of those to whom they are consigned by the donation of others by the Laws of Nations, and maintained or destroyed by the equity of those various Laws which rules and governs them in reference to matters publick, all which is justified by the Scripture it felf; It may not now seem improper to examine the private causes thanging the same, and of the contingencies and advantages.

Of Owners and Partners of Ships. Book II

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tages that wait on that which we properly call Com-

The Great Creator having finished his Mighty Work, and given Man that Dominion which he now enjoys as well over the Fish in the Seas, as the Beasts in the Field, he was not forgetful of bestowing on him those things which were necessary for the government and support of the fame, creating at the fame time Trees which grow as it were fpontaneously into Vessels and Canoos, which wanted nothing but launching forth to render them useful for his accommodation, which afterwards he by his Divine Genius (inspired by that Mighty One) finding Materials, hath fince fo compleated and equipt, as to render it the most beautiful and stupendious Creature (not improperly fo called) that the whole World can produce, which being not retarded by lett of Winds, or other contingent accidents, fubmits it felf to plow the unknown paths of that vast Element, to brave all Encounters of Waves and Rocks, to fathom and furvey the vast immenfities of the very World it felf, to people, cultivate, and civilize uninhabited and Barbarous Regions, and to proclaim to the Universe the Wonders of the Architect, the Skill of the Pilot, and above all the Benefits of Commerce; fo that it is no wonder at this day to find Nations contending who should furpass each other in the Art of Navigation, and to monopolize, if possible, the very Commerce and Trade of the World into their hands; and that, all by the means of this most excellent Fabrick.

II. Hence it is, that Ships and Veilels of that kind being originally invented for use and profit, not for pleasure and delight, to plow the Seas, not to lye by the Walls, iten exercitor. num. 3. Infl. de to supply those of the Mountains as well as those on the Sea

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Therefore upon any probable design the major part of the Owners may even against the consent, though not without the privity and knowledge of the rest, freight out their Vessel to Sea.

If it should so fall out that the major part protest against the Voyage, and but one left that is for the Voyage, yet the same may be effected by that party, especially if there be equality in Partnership,

NI. Owners

III. Owners by Law can no ways be obliged to continue Leg. Fin. c. 5. their paction or partnership without sundering; but yet pro Socio & poss. if they will funder, the Law Marine requires some conside- inft. & D. eod. rations to be performed before they can fo do. And Leg. in hoc patherefore if the Ship be newly built and never yet made a rag. sic onveniate Voyage, or is newly bought, she ought to be subject to pro Sco. one Voyage upon the common out-read and hazard, before any of the Owners shall be heard to funder and difcharge their parts; but by the Laws of England the Owners may before any fuch Voyage fell or transmit their Right.

If it falls out that one is so obstinate that his consent Bart. & Paulin cannot be had, yet the Law will enforce him either to Leg. hac diftinhold, or to fell his proportion; but if he will fet no price, tio & cum fund hold, or to fell his proportion; but if he will fet no price, dumff. locate. the rest may outrigg her at their own costs and charges, and whatfoever Freight she earns, he is not to have any share or benefit in the same. But if such Vessel happens Such Vessels to miscarry or be cast away, the rest must answer him his when freight-

part or proportion in the Vessel.

fome of the Part-Owners, the fame is under fuch Provisoes, Cautions, and Limitations as the Law in that case requires.

But if it should fall out that the major part of the Own Gloß. Leg. & naers refuse to set out the Vessel to Sea, there by reason of vis & juvis in the unequality they may not be compelled, but then such culpa de rei un-Vessel is to be valued and fold: The like where part of the dic. & Leg. ar-Owners become deficient or unable to fet her forth to boribus. S. na-Sea.

IV. The Master of the Vessel is eligible by the Part- Leg. non alicer Owners in proportion, not by the majority, and he that F. de will & is most able is to be preferred. The wisdom of the later habi. Ages have been fuch, that few have gone out in that condition, but those that have commonly had shares or parts in the same Vessel. In the preferring therefore of a Ma- 18 H. S. n. 53 ster, his ability and honesty is to be considered, since on him rests the charge not only of the Vessel, but of the La- + coke 4. Inflin ding; their very actions subjecting the Owners + to answer 146. for all damage that shall be sustained by him or his Mari- * Hill. 23 Car. ners, be it in the Port or at Sea, to the Lading or Goods 2. B. R. Morfe of the Merchants or Laders, and they are made liable as versus Sine. well by the Common Laws * of England, as the Law Ma- Stab. Leg. 1. rine.

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* Hill: 26, 27

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Of Owners and Partners of Ships. Book II.

V. If the Master commits offences either negligently or wilfully, he shall be responsible over to his Owners for the reparation of damage; nor are they bound to joyn, but may fever and fue apart as well by the Common Law * Car. 2. in B. R. as the Marine: So likewise if the Ship hath earned Freight, and part of them receive their parts, the rest may bring their Action for their share without joyning with the others.

Leg. inter fipalantem in S. Sacram. ff. de vers oblig.

VI. If a Ship be broken up or taken in pieces, with an intent to convert the same to other uses; if afterwards upon advice or change of mind, she be rebuilt with the fame Materials, yet this is now another, and not the same Ship, especially if the Keel be ript up or changed, and the whole Ship be once all taken asunder and rebuilt, there Leg. quod in S. determines the Partnership quoad as to the Ship. a Ship be ript up in parts, and taken afunder in parts and repaired in parts, yet she remains still the same Vessel and not another, nay though she hath been so often repaired that there remains not one stick of the original Fabrick.

fin. F. de Leg.

VII. If a man shall repair his Ship with Plank or other Materials belonging to another, yet the Ship maintains and keeps her first Owners.

Leg. Mufins ff. de rei vendic.

> But if a man shall take Plank and Materials belonging to another, and prepared for the use of shipping, and with them build a Ship, the property of the Vessel follows the Owners of the Materials, and not the Builder.

ff. lib. 6. tit. 1. leg. 61.

But if a man cuts down the Trees of another, or takes ff. de acq. ver. Timber or Planks prepared for the erecting or repairing of a dwelling house, nay though some of them are for shipping, and builds a Ship, the property follows not the

Leg. fi ex meis. dom. & Leg. fi convenirit 5. fi quis sic. ff. de pign. act.

Owners but the Builders. VIII. If a Ship be fold together with her Tackle, Furin & armamen- niture, Apparel, and all other her Instruments thereunto ta.ff. de rei ven- belonging, yet by those words the Ships Boat is not conveyed, but that remains still in the Owners; fo it is if the Ship be freighted out, and afterwards at Sea she commits Piracy, the Ship is for feited, but the Boat remains still to

Lee. Marcellas dicat.

+ Trin. 3 Jac. the Owners +. part , Abridg. fol. 530. Bald. in Leg. cum proponas Cod. de Nautic. è fænore, num. 6.

B. R. Rolls 1.

And though Ballast is generally used in shipping by those Ships that are freighted outwards in order to bring-

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ing home of Goods, yet is not the same any part of the Furniture of the Vessel, and so it was adjudged in debt on Bond, the Condition was, That whereas the Plaintiff had bought of the Defendant a Ship, if the Plaintiff shall enjoy the faid Ship with all the Furniture belonging to the fame, without being disturbed for the Ship or any Furniture appertaining to it, that then, &c. and the case fell out to be, that after the fale of the Ship a stranger sued the Plaintiff for certain monies due for Ballast bought by the Defendant for the same Ship, in which Suit he obtained sentence, upon which the Ship was seized, the Question was, Mich. 29 Eliz If Ballast be Furniture for a Ship or not, it was resolved in C. B. that it was not; for though it may be as necessary as Sails, Leon. 46, 47. yet it is not always fo, for fometimes they fail without Ballast, for the Merchandize it self may be sufficient to answer that purpose.

IX. If a Ship commits Piracy, by reason of which she Mich. 13 Jac. becomes forfeited, if before feizure she be Bona fide fold, in B.R.Sir Rich. the property shall not be questioned, nor the Owners di- Rolls Abridge

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X. If a Master shall take up Monies to mend or victual Dig. lib. 14. his Ship where there is no occasion, (though generally the tit. 1. S. 17. Owners shall answer the fact of the Master) yet here they shall not, but only the Master. But if there were cause of mending the Ship, though the Master spend the money another way, yet the Owner and Ship become liable to the Bridgeman's fatisfaction of the Creditor; for it were very unreasonable Case, Hobart, that the Creditor should be bound to take upon him the fel. 10, 11. care of repairing the Ship, and fupply the Owners room, which must be so, if it should be necessary for him, to prove that the money was laid out upon the Ship; fo on the other hand, it stands with reason that he be sure that he lends his money on fuch an occasion, as whereby the Masters fact may oblige the Owners, which he cannot do otherwife, unless he knows that the money borrowed was necellary for the repair of the Ship; and therefore if the Ship Gloff. African. wanted some repairs, and a far greater and more extra. Super cod. leg. vagant fumm was lent than was needful, the Owners shall & S. not be liable for the whole.

XI. If a man gets possession of a Ship having no Title to Dig. lib. 6. tit. the same, by the Law Marine he shall answer such damage 1.62. & lib. 7. tit. 1. 12. S. I. & Papinion on the fame Law.

fol. 530.

Of Owners and Partners of Ships. Book II.

as the Ship in all probability might have earned; and the reason of that is, because the only end of Shipping is the imployment thereof: but if a Warrant be directed out of the Admiralty to the Marshal of the same Ship to arrest fuch a Ship and Salvo custodire, who by force of the same enters into the fame Ship, though the Warrant does not Mich. 2 car. in mention that the Officer should carry away the Sails of the fame Ship, yet he may justifie the taking the same, for versus Jockley, that he cannot Salvo custodire the same Ship, unless he car-

B. R. Creamer Latch. jol. 183.

ries away the Sails.

casion in Parliament.

Digeft. lib. 19. tit. 2. 61. Came Law.

XII. A Ship is freighted out, accordingly she receives in her Lading pursuant to agreement, afterwards an Em-Scavola on the bargo happens, and the Lading is taken as forfeited, yet the Owners shall notwithstanding receive Freight, for here is no fault in them, but only in the Merchant.

> XIII. In Aqua dulci a Ship may become a Deodand, but in the Sea or in Aqua salfa, being an Arm of the Sea,

though it be in the body of the County, yet there can be g. Inflic. fol. 58. no Deodand of the Ship or any part of it, though any body be drowned out of it, or otherwise come by their death in the Ship, because on such waters Ships and other Vessels are subject to such dangers upon the raging waves in respect of Wind and Tempest; and this diversity all our ancient Lawyers do agree in, and it does more especially appear in the Parliament Rolls, where upon a Petition it 51 Ed. 3. num. Was desired, That if it should happen that any man or boy should be drowned by a fall out of any Ship, Boat, or Veffel, I R. 2. n. 106. they should be no Deedands: Whereupon the King by great advice with his Judges and Councel learned in the Laws, made answer, The Ship, Boat, or Vessel being upon the Sea, should be adjudged no Deodand, but being upon a fresh River it (hould be a Deodand - but the King will thew fabour.

4 R. 2. N. 33. I H. 5. 11. 35.

Rot. Pariiam.

73.

A Ship lying at Redrith in the County of Kent near the shore to be careen'd and made clean, it happened that one of the Shipwrights being at work under her at low Water, the Vessel (then leaning aside) fortuned to turn over the contrary fide, by means of which the Shipwright was killed: Upon a Tryal at Bar where the Question was, Whether this Deodand did belong to the Earl of Salisbury, who was Lord of the Mannor, lying contiguous to the

There is abundance of other Petitions upon the like oc-

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w n nt s, place where the man was slain, or to the Almoner as a matter not granted out of the Crown, in that case it was resolved, that the Ship was a Deodand, and the Jury thereupon found a Verdict for the Lord of Salisbury that the same did belong to his Mannor.

XIV. Thus men from their necessity and safety having from hollow Trees, nay Reeds, Twigs and Leather (for fuch were the rude beginnings of those stupendious things we now admire) advanced the Art to that degree, as to render it now the most useful thing extant; and as the Mathematicks, Astronomy, and other Sciences have added to its fecurity, fo have succeeding Ages from time to time provided Priviledges and Laws by which it hath always been regulated and governed, the which upon all occasions, and in all Courts have generally had a genuine construction as near as might be to the Marine Customs; and therefore at this day if a Ship be taken away or the Owners dispossest, they may maintain an Action of Trover and Conversion for an eighth or fixteenth part of the same, as well by the Common Laws of this Kingdom as the Law Marine, and they need not joyn with the rest of their Owners.

Aa4 CHAP.

CHAP. II.

Ballers of Ships, their Actions confidered in reference to cales pribate and publick.

I. A Master or Skipper his condition considered in reserve to his Interest and Authority generally.

II. If Goods be lost or imbezelled, or any other detriment happens in a Port, who shall answer.

III. The Duty of Masters of Ships, as if they shall set Sail after an Embargo, who shall answer.

IV. Of faults ascribed to him before departure in Tempestuous weather, staying in Port, &c.

V. Over-charging or over-lading the Ship above the birth-mark, or receit of such persons on Ship-board as may hazard the Lading.

VI. Of Lading aboard in the Ships of Enemies, his own proving difabled.

VII. Of shipping of Goods elsewhere than at the publick Ports or Keys, and of taking in prohibited Goods.

VIII. Of wearing unlawful Colours or Flags, and of yielding up his Ship cowardly, if assaulted, where liable, and where excused.

IX. Of carrying fictitious Cocquets and Papers, and refusing payment of Customs and Duties.

X. Of letting Sail with insufficient Tackle, and of taking in and delivering out with the like, and of his Charge of Goods till safely delivered.

XI. Of departing without giving

notice to the Customer.

XII. Of Faults committed by Maflers and Shippers at Sea. XIII. Rules in Law in the charging him for reparation of damage.

XIV. Of the Power and Authority that the Master hath in disposing, Hypochecating or pledging the Ship, Furniture, and Lading.

XV. Where Masters are disabled, though in necessity to Impawn the Vessel.

XVI. Where they may dispose of Vefsel and Lading, and where not.

XVII. What Vessels and Mariners the Master must have for Importing in or Exporting out of His Majesties Plantations in Asia, Africa and America.

XVIII. What Ships may go from Port to Port in England.

XIX. Ships not to import the Goods of any Country but of that from whence they are brought.

XX. What time the Master shall be coming up after arrived at Gravef-end, or at any other Part within the Realm, in order to his discharge.

XXI. Of going from Port to Port within the Realm how provided.

XXII. Of Goods prohibited to be imported from the Netherlands or Germany in any Ships whatseever.

I. A Master of a Ship is no more than one who for his knowledge in Navigation, fidelity and discretion, hath the Government of the Ship committed to his care and management, and by the Common Law, by which properties

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properties are to be guided, he hath no property either general or special, by the constituting of him a Master; yet the Law looks upon him as an Officer, who must render Hob. Rep. fol. 11. and give an account for the whole charge when once com-Bridgman's mitted to his care and custody, and upon failure to render Case. fatisfaction: and therefore if misfortunes happen, if they be either through negligence, wilfulnefs, or ignorance of himself or his Mariners, he must be responsible.

II. If the fault be committed in any Port, Haven, River or Creek . or any other place which is infra Corpus Comitathis, the Common Law shall have Jurisdiction to answer the * Dowdal's party damnified and not the Admiralty *; but if the same Case. be committed Super altum mare, the Admiralty shall have Coke lib. 6. Intifdiction of the same; yet if it be on a place where fol. 47. there is divisum imperium, then according to the flux or reflux the Admiralty may challenge, the other of Common right belonging to the Common Law.

modities are put aboard the Ship, whether the be riding in Port, Haven, or any other part of the Seas, he that is Exercitor Navis is chargeable therewith; and if the fame F. Naut. caup. be there loft or purloyned, or fustain any damage, hurt stab. leg. 1. or loss, whether in the Haven or Port before, or upon the Sect. 2, 3, 6, 7. Seas after she is in her Voyage, whether it be by Mariners

And therefore fo foon as Merchandifes and other Com-

or by any other through their permission, he that is Exercitor Navis must answer the damage, for that the very lading of the Goods aboard the Ship does subject the Master to answer the same; and with this agrees the Common Law, where it was adjudged, That Goods being fent aboard a Ship, and the Master having signed his Bills of Lading for the fame, the Goods were stowed, and in the night divers persons under the pretence that they were Press masters, entred the Ship and robb'd her of those Goods, the Merchant brought an Action at the Common Law against the Malter, and the Question was, Whether he should answer for the same? for it was alledged on his part, That there was no default or negligence in him, for he had a fufficient guard, the Goods were all lockt up under hatches,

the Thieves came as Pres. Masters, and by force robb'd the Ship, and that the same was vis major +, and that he could the Civil Law not have prevented the fame. And lastly, That though does somehe times allow.

at the Bar.

Morfe verf. slue, he was called Mafter or Exercitor Navis, yet he had no Hill. 23 Car. 2. share in the Ship, and was but in the nature of a Servant Regis, adjudg- acting for a Salary. But notwithstanding it was adjudged Verdict found for the Plaintiff, for at his peril he must fee that all things be forth-coming that are delivered to him, let what accident foever happen; (the Act of God, or an Enemy, perils and dangers of the Sea only excepted) but for Fire, Thieves, and the like, he must answer, and is in the nature of a Common Carrier; and that though he receives a Debet Exercitor Salary, yet he is a known and publick Officer, and one

fervi factum

rum suorum sove that the Law looks upon to answer, and that the Plaintiff liberi fint, five hath his Election to charge either Master or Owners, or both at his pleasure, but can have but one satisfaction.

præftare, nec immerito factum corum præftat cum ipfe cos suo periculo adhibuerit, sed non alias præftat quam fi in ipfa nave damnum datum fit , ceterum , fi extra navim licet à nautis, non prestabit.

Naut. Caup. Stabilit. Leg. 1. Seft. 7. debet Exercitor.

If a Master shall receive Goods at the Wharfe or Key. Eod. Leg. debet or shall fend his Boat for the same, and they happen to be Exercitor. loft, he shall likewise answer both by the Marine Law and the Common Law.

Digest. lib. 9. tit.2. Leg. 61.

III. If Goods be laden aboard, and after an Embargo or Restraint from the Prince or State comes forth, and then he breaks ground, or endeavours to fail away, if any damage accrues, he must be responsible for the same. The reason is, because his Freight is due and must be paid. nay, although the very Goods be seized as bona contra bandos.

* Leg. Oleron. Judg. 2.

IV. He must not fail in Tempestuous weather, nor put forth to Sea without having first consulted with his Company *: nor must he stay in Port or Harbour without just cause when a fair wind invites his departure.

V. He must not over-charge or lade his Ship above the birth mark, or take into his Ship any persons of an obscure and unknown condition without Letters of fafe-conduct.

VI. Nor ought he to lade any of his Merchants Goods Stat. 18 H. 6. cap. 8. aboard any of the Kings Enemies Ships (admitting his own Lib. wit. ad Leg. Vessel leaky or disabled) without Letters of safe conduct, Rhod. & Leg. otherwise the same may be made Prize, and he must apquum preponas c. de Naut: fer- fwer the damage that follows the action.

Nor shall he come or sneak into the Creeks or other places when laden homewards, but into the Kings great Ports,

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W Ro is l Ports, (unless he be driven in by Tempest) for otherwise stat. 4 H.4. 20. he forfeits to the King all the Merchandize, and therefore Leg. fin. parag. fi propt . neceffit. must answer.

VII. Nor ought he to ship any Merchandize, but only Stat. 15 H. 6. at the Publick Ports and Keys. cap. 8.

He must not lade any prohibited or unlawful Goods, 19 Eliz. cap.9. whereby the whole Cargo may be in danger of Confiscati- 12 P. & M. 5. on, or at least subject to seizure or surreption. I Fac. cap. 25. He may not fet fail without able and fufficient Mariners 12 Car. 2. cap.

both for quality and number.

VIII. He may not use any unlawful Colours, Enligns, *Proclamation Pendants, Jacks or Flags *, whereby his Ship or Lading Sept. 25. Anno may incur a Seizure, or the Cargo receive any detriment 26 Car. 2.

or damage.

He must not suffer the Lading to be stoln or imbezled, Rhod. if the same be, he must be responsible, unless it be where D. Leg. in fin. & there is vis major, as if he be affaulted at Sea either by Ene. Leg. li vendita mies, Ships of Reprize, or Pirates, there if no fault or peric. rei vend. negligence was in him, but that he performed the part Naut. Caup. of an honest, faithful, and valiant + man, he shall be ex. + Stat. 16 car. cused. Yet it hath been adjudged, That if a Merchant. 2. cap. 8. man lyes in a Port or Haven, and a Pirate, Sea-Rover, Morse versus or other Thieves enter her and over-power her men, and Slue, Trin. 23 then rob her, yet the Master must be responsible; but if Car. in B. R. an Enemy enter and commit the depredation, there the Mafter is excufed.

IX. He must not carry any counterfeit Cocquets or 13 R.2. cap.9. other fictitious and colourable Ship-papers to involve the Leg. 1. cod. de

Goods of the Innocent with the Nocent.

Nor must be refuse the payment of the just and ordina- Secund. fin. Lee. ry Duties and Port-charges, Customs and Imposts, to the ult.adLeg.Rhod. hazard of any part of his Lading; yet if he offers that & Lig. quam which is just and pertains to pay, then he is excused.

X. He must not set fail with insufficient Rigging or Lig. Oleron. 24. Tackle, or with other or fewer Cables than is usual and Per Leg. quant. requifite, respect being had to the burden of the Vessel: de Pub. And if any damage happens by the delivery of the Goods into the Lighter, as that the Ropes break, and the like, there he must answer; but if the Lighter comes to the Wharfe or Key, and then in taking up the Goods, the Rope breaks, the Master is excused, and the Wharfinger * coke lib. Enis liable *.

Navib. non exp

cusand. proponas C. de

tries, fol. 3.

If fine Goods, or the like, are put into a close Lighter, and to be conveyed from the Ship to the Key, it is usual there that the Master send a competent number of his Mariners to look to the Merchandize, if then any of the *Pajch. 26 car. Goods are lost or imbezled, the Master is responsible * rul'd at Guild- and not the Wharfinger; but if fuch Goods are to be fent aboard a Ship, there the Wharfinger at his peril must take care the fame be preferved.

> XI. After his arrival at Port, he ought to fee that the Ship be well moared and anchored, and after reladed, not to depart or fet fail till he hath been cleared; for if any damage happens by reason of any fault or negligence in him or his Mariners, whereby the Merchant or the Lading

receives any damage, he must answer the same.

XII. And as the Law ascribes these things and many more to him as faults, when committed by him or his Mariners, in Ports, fo there are other things which the Law looks upon to be as faults in him in his Voyage, when done.

As if he deviates in his course without just cause, or steers a dangerous and unusual way, when he may have a more fecure passage, though to avoid illegal impositions, he may fomewhat change his course; nor may he fail by places infested with Pirates, Enemies, or other places notorioully known to be unfafe, nor engage his Vessel among Lib. r. cod. de Rocks or remarkable Sands, being thereto not necessita-Navibus non ex- ted by violence of Wind and Weather, or deluded by false lights.

XIII. By the Marine Law, he that will charge a Master with a fault, as in relation to his Duty, must not think that a general charge is sufficient in Law, but he ought to assign and specific the very fault wherewith he is so charged.

So he that will infer, that fuch or fuch a fad difaster hath happened or been occasioned by reason of some fault in the Mariners, must not only prove the fault it self, but must also prove that that fault did dispose to such a fad event, or that fuch a misfortune could not have happened without fuch a fault precedent.

XIV. When Voyages are undertaken, the Master is there placed in by the Owners, and they ought to make fore, urrum fi in good the Malters fact and deed tand therefore as the

18 Eliz. cap.9. 14 Car. 2. cap. II.

Hall by L. C. J.

Hales.

Digeft. l. cum in debito ff. de Probat.

cusand.

TRecepit Salvum navim res mifto the carefi fince t what and t Good to th borro of the of th price paid pay 1 main happ price

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whole care and charge of Ship and Goods are committed fe ei affignate whole care and charge of snip and Goods are committee fint, an ets non to the Master, it is the prudence of the Owners to be sint, an ets non careful who they will admit Commander of their Ship, shoe tamen ipso fince their actions subject them to answer the damage, or quod in navim whatever other act he shall do in reference to his Imploy; miffe fint, receand therefore he can freight out the Vessel, take in pta videntur & Goods and Passengers, mend and furnish the Ship, and omnium recepit to that effect, if need be, in a strange Country he may in navim illate borrow money, with advice of his Mariners, upon fome funt, & fattum of the Tackle, or fell some of the Merchandize. If part non solum nauof the Goods shall be sold in such necessity, the highest tarum prastare price that the remainder are fold for must be answered and debet, sed & repaid to the Merchant; after which the Merchant must the Caup. Stab. pay for the Freight of those Goods as well as for the re- Leg. 1. Sett. remainder & Leg. Oleron I. But if the Ship in the Voyage cepit. happens to be tast away, then only shall be tendred the price that the Goods were bought for.

By the Common Law the Master of a Ship could not impawn the Ship or Goods for any property either general or special was not in him, nor is such power given unto

him by the constituting of him a Master.

Yet the Common Law hath held the Law of Oleron reasonable. That if a Ship be at Sea and takes leak, or otherwife want Victual or other Necessaries, whereby either her felf be in danger, or the Voyage may be defeated, that in fuch case of necessity the Master may impawn for money or other things to relieve fuch extremities by imploying the fame to that end; and therefore he being the person Lig. Oleron. trusted with the Ship and Voyage, may therefore reaso. Eridgeman's nably be thought to have that power given to him impli- cafe, Hobart, citly, rather than to fee the whole loft.

But a Master for any debt of his own cannot impawn or Hypothecate the Ship, &c. for the fame is no ways Leg. Oleron. liable but in cases of necessity for the relief and compleat-

ing of the Voyage.

Nor can he fell or dispose of the same without an authority or Licence from the Owners; and when he does impawn or Hypothecate the Vessel or Furniture, he ought to have the confent and advice of his Mariners.

XV. And where the Ship is well engaged, the is for ever obliged, and the Owners are concluded thereby, till Re-

demption

custodiam que

fol. 10, 11.

But

But in regard Masters might not be tempted to engage the Owners, or infetter them with fuch fort of obligations, but where there is very apparent cause and necessity, they feldom fuffer any to go Skipper or Master but he that hath a share or part in her; so that if monies or provisions be taken up, he must bear his equal share and proportion with the rest.

Fudgment, Ole-70% cap. 22.

Nor can the Master on every case of necessity impawn the Vessel or Furniture; for if she be freighted, and he and the Owners are to joyn in the laying in of the provisions for the Voyage, and perhaps he wants money, (a great fign of necessity) yet can he not impawn the Vessel or Furniture, any other or further than for his own part or share in her, the which he may transfer and grant as a man may do an eighth or fifth part in Lands or Houses: But such obligation of the Vessel must be in Foreign parts or places where the calamity or necessity is universal on the Vessel, that will oblige all the Owners.

XVI. If the Veffel happens afterwards to be wreckt or cast away, and the Mariners by their great pains and care recover some of the ruines and lading, the Master in that cafe may pledge the same, the product of which he may distribute amongst his distressed Mariners in order to the Judgment, Ole- carrying them home to their own Country: but if the Mariners no ways contributed to the Salvage, then their reward is funk and lost with the Vessel. And if there be any confiderable part of the Lading preferved, he ought not to difmits his Mariners, till advice from the Laders or Freighters; for otherwise perchance he may be made

liable.

Ton. cap. 3.

If Merchants freight a Vellel at their own charges, and fet her to Sea, and she happens afterwards to be Weather-bound, the Master may impawn either Ship or Lading at his pleasure, or at least such as he could conveniently raise monies on, rather than see the whole Voyage And if he cannot pawn the Lading, he may fell the fame, that is, so much as is necessary; in all which cases his act obliges.

However Orders and Instructions are as carefully to be

look'd upon and followed as the Magnet.

The like pro-XVII. He is not to Import into, or Export out of any vision on the the English Plantations in Asia, Africa, or America, but in English

Leg. Oleron. cap. 22.

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English or Irish Vessels, or of the Vessels built and belong- for Goods of ing to that Country, Island, Plantation, or Territory; the Moscovy and of Master and 3 fourths of the Mariners to be English, upon the Dominions forfeiture of Ship and Goods. And if otherwise, they are to be lookt upon as Prize, and may be seized by any of czar or Empethe Kings Officers and Commanders, and to be divided as ror: So likewife Prizes, according to the Orders and Rules of the Sea.

All Goods of the Growth of his Majesties Plantations are Ottoman Terrinot to be imported into England, Ireland, or Wales, Islands tories or Doof Jersey or Guernsey, but in such Vessels as truly belong to minions. Owners that are of England, Ireland, Wales, Jerfey or Guernsey, and 3 fourths at least of the Mariners are to be

English, upon forfeiture of Ship and Goods.

The Goods and Wares of those Plantations, and brought the Clauseas to in fuch manner as aforefaid, must be brought from those Mariners. very Countries of their feveral productions and growths, or from the Ports where they are usually shipped out, on forfeiture of Ship and Goods.

XVIII. No Ship to go from Port to Port in England, Ire- That is, those land, Wales, Jersey, or Guernsey, or Berwick, unless the that do not be-Owners are Denizens or Naturalized, and the Master and long to Eng-

3 fourths to be English.

All Owners must swear that their Vessels or Ships are Jersey or Guerntheir own proper Ships and Vessels, and that no Foreigner fev. hath any share or part in her, and must enter the same, and that the was bought for a valuable confideration, Bona fide.

XIX. Nor to bring in any Goods from any place, but what are of the growth of that very Country, or those places which usually are for the first shipping, on pain of

forfeiture of their Vessel and Furniture.

This doth not extend fo far, but that Masters may take in Goods in any part of the Levant or Streights, although they are not of the very growth of the place, fo that they be imported in English Ships 3 fourths English Mariners: So 12 Car. 2. cap. likewise those Ships that are for India in any of those Seas 18. to the Southward and Eastward of Capo bona Speranza, although the Ports are not the places of their very growth.

Any people of England may import (the Master and Mariners 3 fourths English) any Goods or Wares from Spain. Portugal, Azores, Madera, or Canary Islands, nay in Ships that are not English built, Bullion may be imported; fo likewife in those that are taken by way of Prize Bona fide.

and Territories of the Great of Currants be-

Note, In cases of fickness, death, captivity, falves

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But Sugars, Tabaco, Cottons, Ginger, Indicoes, Fustick, or any other dying Wood of the growth of his Majesties Plantations, to be shipped, carried or conveyed from any of the English Plantations, are to be carried to no place in the World, but are to come directly for England, Ireland, Wales, or Berwick, upon pain of forseiture of Ship and Goods, and the Master is to give Bond with one Security in 1000 l. if the Ship be under the burden of 100 Tuns, and 2000 l. if above, that upon Lading he brings his Ship directly into England, Ireland, Wales, or Berwick, (the danger of the Seas excepted) so likewise they are to do the same for the Ships that shall go from the Plantations at the Plantations to the Governour, upon forseiture of the Ship and Goods.

12 Cat.2. C.18.

XX. When the Master shall arrive at Gravesend, he shall not be above three days coming from thence to the place of discharge; nor is he to touch at any Key or Wharfe till he comes to Chesters Key, unless hindred by contrary Winds, or draught of Water, or other just impediment to be allowed by the Officers: And likewise he or his Purser are there to make Oath of the Burden, Contents and Lading of his Ship, and of the marks, number, contents and qualities of every parcel of Goods therein laden to the best of his knowledge; also where and in what Port she took in her Lading, and what Country built, and how manned, who was Master during the Voyage, and who the Owners, and in Out-Ports must come up to the place of unlading, as the condition of the Port requires, and make Entries, on pain of 100 L.

Nor is such a Master to lade aboard any Goods outwards to any place whatsoever, without Entring the Ship at the 14 Car.2. c.11. Custom-House of her Captain, Master, Burden, Guns, Ammunition, and to what place she intends, and before departure to bring in a Note under his hand of every Merchant that shall have laid aboard any Goods, together with the marks and numbers of such Goods, and be sworn as to

the same, on pain of 1001.

No Captain, Master, Purser of any of his Majesties Ships of War shall unlade any Goods before Entry made, on pain of 100 l.

Note, There is a List of all Foreign built Ships in the Exchequer, and that no Foreign Ship not built in any of

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his Majesties Dominions of Asia, Africa, or America, after Oblob. 1. 1662. and expressy named in the List, shall enjoy the Priviledges of a Ship belonging to England or Ireland, although owned and manned by English, except only such as are taken by way of reprize and condemnation made in the Admiralty as lawful prize; some but English and Irish Subjects in the Plantations are to be accounted English.

XXI. If the Master shall have freight from Port to Port within the Realm, he ought to have Warrant for the same, on pain of forfeiture of the Goods, and he is to take forth a Cocquet, and become bound to go to such Port designed for, and to return a Certificate from the chief Officers of that Port where the same was designed for, and discharged within six months from the date of

the Cocquet.

XXII. But from the Netherlands or Germany there may not be imported any fort of Wines (other than Rhenish) Spicery, Grocery, Tabaco, Pot ashes, Pitch, Tar, Salt, Rosin, Deal-boards, hard Timber, Oyl, or Olives, in any

manner of Ships whatfoever.

It might not feem impertinent that this latter part which is abridged, in reference to matters publick, should be inserted, for that sometimes it may happen that an honest and well meaning Master or Skipper might innocently involve and hazard the loss of his Ship by committing acts against Laws positive and prohibitory; and though Masters and Mariners quatales be not so exquiste as to know all that does belong to their duties, or at least that which the Law lays incumbent on their shoulders; yet for that most of them have some small glimmerings of the same, such hints in matters publick as well as private may not only be of some advantage to them, but also to Merchants, who always upon the miscarriages of the Masters, prove the greatest sufferers, the offenders, for the most part, proving not sufficiently solvent.

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CHAP. III.

DI Bariners, their feberal Offices and Immunities: And of Barratry committed by them.

I. The feveral Marine Officers on Ship-board, and their Charges and Duties.

II. Of the Masters power and authority over them, as in relation to punishing or otherwise.

III. The duty that Mariners owe to each other, and they to the Ship.

IV. Their attendance requisite when laded; and if detriment, where to be responsible.

V. When Accidents befalthem, where they ought to be lookt after, and at whose costs.

VI. The Mariners Oath where requisite to the discharging of the Mafter.

VII. What Accidents do destroy, and what not their wages.

VIII. Where they may joyn all in a Suit for the recovery of their wages, and where not.

IX. Of their wages where liable to answer damage.

X. Where they absolutely lose their

XI. Of Money or Goods taken up by

a Mariner, where it (hall be debt, and where a discount of his wages.

XII. And of their becoming liable to correction.

XIII. Barrarry in the Mariners, the reason why the Law imputes offences in them to be answered by the Mafter.

XIV. In what cases the Master shall become liable for the actions of his Mariners.

XV. Of Goods purloyned before they are brought on Ship-board, where the Master is bound to answer, and where not.

XVI. Of the Antiquity of such Custom.

XVII. Of Goods brought secretly in on Ship-hoard if purloyned, where the Master is not made lia-

XVIII. Of Caution or fore-warning; where the same shall excuse the

XIX. Where the Master Shall be liable notwithstanding such Cau-

I. HE persons ordinary for failing in Ships have divers denominations: The first which is the Master, known to us and by most Nations both now and of old, and Leg. 1. passim especially by the Roman Laws, Navicularius, or Magister ad Leg. Rhod. & Navis; in English rendred Master; or Exercitor Navis; lib. 1. parag. 2. in the Teutonick, Skipper; by the Grecians, Navarchus or Nauclerus; by the Italians, Patrono. But this is only to those Vessels that are Ships of Burden and of Carriage:

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For to Ships of War the principal there is commonly called Commander or Captain. The next in order of Office to the Master, is he who directs the Ship in the course of her Voyage, by the French called Pilote; by the English and Flemming, Steersman; by the Romans, Gubernator; by the Italians, Nochiero Pilotto and Navarchus, as Gerretus writes. The third is esteemed the Master's Mate or Companion, chiefly if the Master be Steersman himself; of old by the Grecian and Romans called Proreta; his Charge Vid. Leg. confol. is to command all before the Mast.

His Successor in order is the Carpenter or Shipwright. by those two Nations of old, called Naupegus by the latter, by the first Calaphates; from the Loyns of one of that Rank sprang that great Emperour Michael, firnamed Ca. The Father Laphates, who denied not to owne the quality of his Father was of Phalages among his Regal Titles. The very name Calaphate the Volateranus ob-

Venetian and Italian still use to this day.

The next who fucceeds in order, is he who bears the Charge of the Ships Boat, by the Italians called Brachierie; by the Grecians and Romans, Carabita, from Carabus,

which denotes the Boat of a Ship.

The fixth in order, especially in Ships of Burden, is the Clerk or Purfer, by the Italians called Scrivano, whose duty is the registring and keeping the Accounts of all received in or delivered out of the Ship; for all other Goods that are not by him entred or taken into charge, if they happen to be cast over board in a storm, or are stoln or imbezled, the Master answers them not, there being no obligation on him by Law for the same; his duty is to unlade by day, not night.

The feventh a most necessary Officer, as long as there Stat. 14 Car. 2: are aboard bellies, sharp stomachs and provision, called the cap. 11.

The eighth is the Ships Boy, who keeps her continually in Harbours, called of old by the Grecians, Nauphylakes, by the Italians, Guardino: These persons are distinct in offices and names, and are likewise distinguished in their hires and wages; the rest of the Crew are under the common name of Mariners, by the Romans called Nanta; but the Tarpollians, or those Youths or Boys that are Appren- Budeus ad Leg. tices obliged to the most servile duties in the Ship, were of I. Nans. Camp. old called Mesonauta.

ferves lib. 23.

Il Consolato &

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* Per Leg. Ole-

erc. att. & l.

in fin. Naut.

Caup.

ron, cap. 6.

II. The Master hath the supreme Rule on Ship-board, and by that means his power and authority is by Law much countenanced, especially in the keeping his Crew in peace folong as they eat his bread; and if a Mariner shall happen to be bruifed or hurt in doing his duty and fervice. the Master * is to take care that he be carefully lookt after in order to the procuring his recovery; and if be it occasi-Per Leg. de ex- oned by the miscarriage of another on Ship-board, he may refund the damage out of his wages, but still remembring

who gave the first asfault.

If it happens that the Master commands his Boat to be manned out, and it so happens that the same is out of order, or unfit to take the Sea, the Tews, or other accoutrements being impotent, if the Mariners happen to be drowned, the Master is to repay by the Law Marine one whole years hire to the Heirs of the drowned: Therefore Masters ought carefully to view and see that the Boat be fit for men to trust their lives in upon his command.

If a Mariner shall commit a fault, and the Master shall lift up the Towel three times before any Mariner, and he shall not submit, the Master at the next place of Land may discharge him; and if he refuses to go ashore, he shall lofe half his wages, and all his Goods within the Ship. If the Mariner shall submit, and the Master will not receive the fame, he shall have his whole wages: or if the Mariner shall depart the Ship on the Master's command, and the Master happens not to take another, if any damage

Per Leg. Oleron, Leg. Denmarc.

Ter Leg. Oleron,

cap. 14.

happens to Ship or Goods, the Master must answer. III. Mariners must help one another at the Sea and in esp. 13. & per Port; if any refuse, upon the Oaths of his Fellows, he loseth his wages. None of the Crew must or ought to leave the Ship without leave of the Master when she comes to a Port, or rides at Anchor, but always conftantly to wait upon her till they are discharged, or have leave, at

least half to be left on ship-board.

I eg.nemo de Reg. rumq; de in jus

A Mariner may not carry out of the Ship above one meals jur. & Leg. ple- meat, but drink not a drop; and when on ship-board, ought not to be there arrested for debt, but only so much of his wages in the hands of the Master attached: yet this is doubted, if it be not on a fworn debt, that is, a Judgment or Sentence, or a Penalty to the King.

They ought not to depart from on ship board when once admitted

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admitted into their full pay (which is always when they break ground) without licence of the Master; and before they may so do, they are to leave a sufficient number to

guard the Ship and Decks.

IV. If the Ship breaks ground, and is fet fail, if after the arrives at her defired Port, their full pay continues till the returns, nor may they in any wife depart from on ship-board without leave or licence of the Master; if they do, and any disaster happens, they must answer: yet at such Leg. Oleron, Port if the Vessel be well moared and anchored with two cap. 5. Cables, they may go without leave, yet so as they leave a sufficient number behind to guard the Decks: but then their return must be in due season; for if they make a longer stay, they must make satisfaction.

V. If Mariners get drunk and wound one another, they are not to be cured at the charge of the Master or Ship; for such accidents are not done in the service of the Ship: but if any of the Mariners be any ways wounded, or do become ill in the service of the Ship, he is to be provided for at the charges of the Ship; and if he he so ill as not sit Leg. Oleron, to travel, he is to be left ashore, and care to be taken that cap. 7-he hath all accommodations of humanity administred to him: and if the Ship is ready for a departure, she is not to stay for him; if he recover, he is to have his full wages, deducting the Masters charges which he laid out for him.

VI. In case of storm if Goods are cast over-board for lightning the Ship, the Oaths of the Mariners, swearing Leg. Oleron, that it was done for the preservation of the Vessel and the cap. 11.

rest of the Lading, shall discharge the Master.

So Goods damnified at Sea, are cleared by the Oath of

the Master and Mariners, by the Laws of Oleron.

To assault the Master on ship board, is a crime that sub- Leg. Oleron, jects the Mariner's hand to be cut off, unless he redeems at cap. 13.

Solz.

VII. If a Ship happens to be feized on for Debt, or otherwife to become forfeited, the Mariners must receive consolat. del their wages, unless in some cases where the wages are forfeited as well as the Ship; as if they have Letters of Mart, and instead of that they commit Piracy, by reason of Trin. 7 Jac. which there becomes a Forseiture of all; but lading of B. R. Abridg. prohibited Goods aboard a Ship, as Wool, and the like, Rolls, fol. 530. though it subjects the Vesselto a Forseiture, yet it disables

Bb 3 not

not the Mariner of his wages; for the Mariners having honestly performed their parts, the Ship is tacitly obliged for their wages: But if the Ship perishes at Sea, they lose their wages, and the Owners their Freight. And this being the Marine Custom, is allowed by the Common Law as well as the Civil Law.

VIII. The Courts at Westminster have been very favourable to Mariners in order to the fuing for wages, for at the Common Law they cannot joyn, but must sue all distinct

and apart for their wages.

Yet in the Admiralty they may all joyn, and the Courts * Not but they at Westminster will not grant a Prohibition *: And so it was Rul'd, where one Fones + a Master of a Ship was sen-Resolutions of tenced in the Admiralty for Wages at the Suit of Poor Mariners, a Prohibition being prayed upon a fuggestion Reports, which that the Contract was made at Land, and not super altum mare: The Court denied it, for that he came too late, Sentence being given below against him: Yet if the Mariners had only Libelled, and there had been no Sentence, and the Defendant had prayed a Prohibition, as above, vet the Court would have denied it. This hath been and is ufually done.

> But the Court will be very well informed that the Libel is for Mariners wages; for some who work Carpenters work and fuch like labour aboard a Ship in a Haven or Port within the Realm (which is infra Corpus Comitatus, (notwithstanding those great and ingenious objections against it) and must be tryed by the Common Law, and not elsewhere) will libel under that cloak for Mariners wages. But the Court in that case will grant a Prohibition.

fo it was done in the like cafe.

But if a Ship rides at Anchor in the Sea, and the Mafter fends his Boat ashore for Victuals or other provisions for the Ship, and accordingly the Providere or Slop feller does bring victuals and provisions aboard; in that case if the contract be made there, it must be sued for in the Admiralty: but if the Goods are by the Purfer or Mariners contracted for at Land, they must sue at Common Law.

IX. If Goods are so imbezled or so damnified that the Ships Crew must answer, the Owners and Master must deduct the same out of their Freight to the Merchants, and the Master out of the wages of the Mariners; for though Freight

may, notwithflanding the 8 Car. Cro. 3. are not nowtaken to be Law. + Fones versus the Poor Mariners. Winch. Rep.

Sitwell & al. Owners of a Ship verf. Love & al. Mich. 87 Car. in B.R.

Latch. fel. II. Hill. I Car. in B. R. Godfrey's Cafe.

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Freight is the mother of wages, fo is it the very Father of damage: For before the Mariner can claim his wages out of what the Ship hath earn'd, the Ship must be acquitted from the damage that the Merchant hath fustained by the negligence or fault of the Mariners: And the reason is, for that as the Goods are obliged to answer the Freight, fo the Freight and Ship is tacitly obliged to clear the damage; which being done, the Mariners are then let in to their wages.

X. If a Mariner be hired, and he deferts the Service be- Lee, Oleron, fore the Voyage ended, by the Law Marine he loses his wages: and the fame Cultom at Common Law pleaded, it

hath been conceived will bar him.

If a Mariner shall commit any wilful or negligent fault, by reason of which the Master, Owners, or the Ship anfwers damage to the Merchant, an Action lyes well against

XI. If a Mariner takes up Monies or Cloaths, and the fame is entred in the Purser's Book, by the Custom Marine it is a discount or a receipt of so much of their wages as the same amounts to: and in an Action brought by them for their wages, the same shall be allowed, and is not accounted mutual, the one to bring his Action for the cloaths, and the other for his wages.

XII. A Master of a Ship may give moderate and due Pasch. 27 car. Correction to his Mariners, and if they bring an Action in B. R. Pidgeagainst him, he may justifie the same at the Common Law; per L.C. J. Hales. and by the Law of Oleron, if a Mariner shall assault the

Master, he is to pay & Solz, or lose his hand.

Mariners after they have unladed the Ship, if they demand their wages, and there be any intention of their de- per Leg. Oleroit, parture, the Master may detain a reasonable proportion cap. 18. of the fame till they bring back the Ship, or give Caution to ferve out the whole Voyage.

XIII. Barratry of the Mariners is a disease so Epidemical on ship board, that it is very rare for a Master, be his induftry never fo great, to prevent; a fpan of Villany on shipboard foon spreads out to a Cloud, for no other cause but of that circular encouragement that one knavish Mariner gives another.

However the Law does in such cases impute offences and Justit. de ob. faults committed by them to be negligences in the Master; que ex dilit. Bb 4 and

Leg. Oleron.

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and were it otherwise, the Merchant would be in a very dangerous condition.

Pafch. II 7ac. in B. R. Hern

versus Smith, Rolls Abridg. - 530.

The reasons why they ought to be responsible are, for that the Mariners are of his own chusing, and under his correction and government, and know no other Superiour on thip-board but himfelf; and if they are faulty, he may correct and punish them, and justifie the same by Law: and likewise if the fact is apparently proved against them, may re-imburse himself out of their wages.

Naut. Caup. Stab. 6, 6 7. Morfe verf.Slue.Pafch. 23 Car. 2. in B. R.

XIV. And therefore in all cases wheresoever the Mer-Leg. 1. Seff. 3, chant loads aboard any Goods or Merchandize, if they be loft, imbezled, or any otherwise damnified, he must be responsible for them; for the very lading them aboard makes him liable, and that as well by the Common Law, as the Law Marine.

Gloff. Super eod. Sect. verb. & factum.

XV. Nay, if his Mariners go with the Ship-Boat to the Key or Wharfe to fetch Goods on ship-board, if once they have taken charge of them, the Master becomes immediately responsible if they steal, lose, damnifie or imbezle them.

XVI. The ancientest Record that is found extant, is that in Edward the Third's time, where one brought an Action of Trespass against the Master for the imbeziement by his Mariners of twenty two pieces of Gold, Bow, Sheaf of Arrows, Sword, and other things, and adjudged he should answer. And for that the same is or may be of great moment, accept of a Transcript of the Record, as the same was certified into Chancery, in order to have it fent into the Kings-Bench, to enable the Plaintiff to bring an Action upon the same Judgment in any place in England where he could meet with the Defendant.

Trin. Anno 24 E.3. 11.45. Bri-Rolo

Previa Regis in V Enerabili in Christo Patri Dão I. Dei gratia Mygozn' Episcopo Phi Regis Ed. Cancellat bel eius locum tenenti fui humiles & deboti, Robertus Gpene, Bajoz Mille Bzistol, Edwardus Blankett, & Johannes de Calle-acre Ballibi libertatum ejufoem Wille, falutem cum omni reberentia a bonoze. De tenoze a Kecozdi a preffus loquele que fuit tozam nobis in Cur Domini Kegis ibidem fine bzebi inter Bent Bilk & Jurdanum Henoze Magiftrum nabis bot la Gzaciane de Bavone in plito transgress' put per brebe Dui Regis nobis diregum fuit bobis

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bobis inde certificatur, tub figillis neis bobis if placet mittimus in bijs fcriptis. Ad placit' Tolls tent ibidem die Wartis pr' post Festum Epiphaniæ Domini anno Kegni Kegis nunc 24. Bent Wilk quet opt. fe berfus Jurdanum Menoze Magistrum nabis bocat la Graciane de Bapone de prito tranfare's' per prac. a unde quer, quod fecundum legem & confuetudinem de OLERON unusquists soa= gifter nabis tenetur respondere de quacung; tranfgt per ferbientes cuos in eadem fact', a Johannes de Kule a Bartolet de Boznes ferbientes pzedicti Jurdani Bagiftri nabis predicte die Wercur pr' ante Festum Dmnium Sandozum Anno Regni pzediai Regis Ed. 23. in Mari jurta Bzitan. in eadem nabi de Johanne de Coznub' ferbient predict' 22. libr in auro, arcus, fagit, glad. gat bona g catalla ad balenc 40 f. ceperunt a aspoztaberunt injuste. ec. ad dampnum predict' Dent 60 P. a ft predictus Jurdamus hoc belit dedicere, poid' Bent paratus eft berificare, Et poictus Jurdanus benit & dicit go let de Oleron taliselt qu'it aliqua bona e catalla Wagistro alicujus nabis liberata funt custodiend, unde idem Magister p eisdem bel p aliqua alia re in eadem nabi facta manucap, illo modo Magister nabis tenetur respondere, non alio modo, Et fup bec petit Judicium. Et poid Bent dicit go unutquifq; Magifter tenetur respondere de quacung; tranfgressione p ferbientes suos in nabi fua fact', & petit Audicium fimer. Et sip boc poice partes babent diem bic die Sabbati pr' post Festum fci Billarit pr' futur ad audiend judicium funm, gc. Ad quem diem poide ptes benerunt & petierunt judicium fuum, ac. Et recitar. Recozdo a processu poidis in plena Curia cozam Bajoze a Ballibis a aliis probis bominibus Wille a Magiaris a Marinariis, bifum fuit Curie, quod unufquifq; Magifter nabis tenetur respondere de quacunq; transgressione P ferbientes flios in nabi fua facta, Ideo confideratum eft, The Judgment quod poict' Bent recuperet dampna fua 40 P. bertus poict' in this case is Aurdanum p Cur tarat' e nibilominus idem Aurdanus according to transgressione poicta in misericozdia.

Law, and ought not to have

been a Capiatur; for it is not fuch a Trespass as the King is entitled to a Fine. Vide 2 Cro. 224. Beedle versus Merris, 7 Jac. Co. Entries the fame, fol. 347.

XVII. The Master subject to answer damage, is to be understood in all fuch cases where the Lading was brought

Leg. I. in fin. Nant. Caup. per leg. itaque de furtis.

aboard either by his confent or his Purser's; for any other. or fuch as shall be fecretly brought in not being entred in the Purser's Book, or in the Bills of Lading, the Master is not obliged to see forth-coming, unless it be such Goods as the parties bring into the Ship about them, as cloaths, money, and the like, as above, those things being feldom entred, yet most commonly those that are visible, the Mafter by Law is responsible for.

Eod.Leg. in fin. Naut. Caup. & per Leg. itaque de eod. edict.

XVIII. So likewise if a Master forewarn a Passenger to keep his Goods, and that he will no ways take care of them, and if they be lost or purloyned by the Crew, he Bartol & Jason will not be obliged to see them forth-coming: the Master in leg.non folum is not there held responsible in case of a loss, especially if S.mortem de non there be any thing of an agreement thereunto.

oper. Brand. versus Glaffes, Sir Fr. Moor Trin. 25 Eliz. in the Exchequer. Vide the same Book, Mich. 7 Eliz. post Worley's Cafe.

XIX. But if Goods shall be fent aboard a Ship, and the Master shall appoint a Cabin for the same, and deliver the Key to the Lader, and tell him he will not be responsible if a loss happens; yet if the Goods are stole, he must notwithstanding make satisfaction: By the Common Law it shall bind an Inn-keeper.

Mich. 27 Car. 2. per Lord Chief Iuftice Hales.

Note, That Goods once delivered to a Master, the Cargo is not subject to be attached in his hands, nor can any Custom whatsoever support the same; for they are in Law as it were bailed to the Ship until the Freight and all other charges are paid: and very much doubted whether an Attachment can be made in London of any Goods at all lying on ship board in the River of Thames. (which though the Port of London) notwithstanding Freight and all other charges are paid off.

CHAP. IV.

Df freight, Charter-parties, and Demozage.

I. The various ways that Ships may IX. Of faults arising from the be Freighted at this day.

II. The ancient way of Freighting. III. How the same is governed upon the various Contracts, and of Accidents bappening to Masters or Laders preventing the Voyage.

IV. Of Agreements parol and in writing, how construed by the

Common Law.

V. of Ships laded and unladed before the Voyage begun; their becoming disabled, viz. perish in the Voyage before the same is compleated.

VI. Of Ships departure considered in reference to Freight and Damage. VII. Of Freight arifing on Trading

Voyages, and lost by contingent actions, considered by the Common Law, and the Law Marine.

VIII. Of Freight becoming due upon the various ways of Contract, or general where none was agreed for. Freighters, and of the decease of the Ship in reference to Freight.

X. Faults of Masters arising from taking in Goods more than were contracted for; and of being forced into Ports in his paffage.

XI. Passengers dying, the Ships title to their Goods and Concerns.

XII. The Ship in construction of Law, how far liable to Freight.

XIII. Ships taken and retaken in war, whether the same destroys the Contract.

XIV. Goods become lost without fault of the Ship, whether Freight becomes due.

XV. Of Freight contracted with persons deficient.

XVI. Of Ships contracted for by the month to be paid at the arrival at a Port; Ship is cast away, the Goods faved : whether the Freight ought to be paid.

I. IN the Freighting of Ships respect is always had to the

A Ship it felf, or else to a certain part thereof.

Again, the Merchants either Freight her by the Month, or the Entire Voyage, or by the Tun; for it is one thing to Freight a Ship, and another thing to take certain Tunnage to Freight.

So also it is one thing to be a Cape Merchant, another

to be an under Freighter.

II. There was of old another way of Freighting, which was when the Merchant agreed with the Master for a sum 21 E.3. Cottons certain to convoy his Goods enfured against all peril; such Abridgment of were to be responsible if any detriment or loss happened: the Parliament Records, so. 63. but that is now become obsolete.

Di freight and Charter-parties. Book II.

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Naut.Caup.Stab. quamcunq; vim. Si quis navem conduxerit, in-Arumenta confignata funto. Pekieus Com.ad Leg. Rhod. Art.

III. Freight is governed generally by the contract, and &c. Leg. 1. §. varies according to the agreement, reduced generally into a Writing commonly called a Charter party, executed between the Owners and Merchant or the Master in the behalf of himself and Owners, or himself and the Merchant, or between them all, or elfe is parol.

The Master or Owners generally Covenant to provide a Pilot and all other Officers and Mariners, and all other things necessary for the Voyage; and for the taking in and

delivering out of the Lading.

Per Leg. Naval. Rhod. Art. 19.

If there be an Agreement and Earnest, but no Writing. if the same be broke off by the Merchant, he loseth his Earnest; but if the Owners or Master repent, they lose double the Earnest.

Mich. 10 Car. and Stock's Cafe, I. Cro. fol. 279. Per Leg. item. S. Si in Leg. Loca.

But by the Common Law of England the party damnified in B.R. Langdon may bring his Action of the Case, and recover his damages on the agreement.

> If a time is appointed by the Charter party, and either the Ship is not ready to take in, or the Merchant not ready to lade aboard, the parties are at liberty, and the party damnified hath his remedy against the other by Action,

to recompense the detriment.

If part of the Lading be on ship-board, and it happens fome misfortune may overtake the Merchant that he hath not his full Lading aboard at the time, the Master is at liberty to contract with another, and shall have Freight by way of damage for the time that those Goods were aboard after the time limited; for fuch agreements being of a Conditional nature precedent, a failure as to a compleat Lading will determine the same, unless afterwards affirmed by consent. And though it be no prudence for every Merchant or every Master to depart from the Contract if it should so fall out that the Agreement as to the Lading is not performed according to promise (seldom ever done if any part be aboard) yet it is the highest Justice, that Ships and Masters should not be infettered but free; for otherwise by the bare lading of a Cask or Bale, they might be defeated of the opportunity of Passage or Season of the year.

Mich. 10 Car. in B.R. Langdon and Stock's Cafe, Cro. 1. part, fo!. 279.

So on the other hand, if the Vessel is not ready, the Merchant may ship aboard in another Vessel the remainder of his Goods, and discharge the first Skipper, and recover damages against the Master or Owners for the rest: This is grounded upon the like reason as the former.

And therefore by the Law Marine, chance or some Per Leg. Gex other notorious necessity will excuse the Master; but then conduct. & Leg. he loseth his Freight till such time as he breaks ground: sitem fundus And till then he fustains the loss of the Ship.

But if the fault be in the Merchant, he then must an- Per Leg. Oleron. fwer the Master and the Ships damage, or else be liable to cap. 21. entertain the Ships Crew ten days at his own Charge; but Art. 25. Legum after that, then the full Freight: and if any damage hap Naval. Art. 29. pens afterwards, the Merchant must run the risque of eod. that, and not the Master or Owners. But by the Common Rich. verf. Knee-

Law, fo long as the Master hath the Goods on ship-board, land Cro. 2. part. he must see them forth-coming.

IV. Charter-parties have always by the Common Law had a genuine construction as near as may be, and according to the intention and defign, and not according to the literal fense of Traders, or those that merchandize by Sea, yet they must be regularly pleaded; and therefore where one had by Charter party dated Sept. 8. 38 Eliz. hired a Ship for a Voyage to Dantzick for Corn, it was agreed betwixt them, that after the Ship should be laden she should fail to Leghorn, there to be delivered, and in consideration that the Plaintiff had agreed, that the Defendant should have the moity of Corn, quod tunc fuit, or hereafter should be laden in the Ship during the faid Voyage, the Defendant by Judgment dated Off. 9. 38 Eliz. Covenanted to pay the moity of the money for the faid Corn, quod tunc fuit, or afterwards should be laden, &c. and then comes and fays, that Oct. 9. 38 Eliz. the Ship was laden with 60 Lasts of Corn, and for not performance of the moity of his payment the Action was brought; the Defendant to this comes in and pleads that the Deed was sealed Oct. 28. in 38 Eliz. & quod adtune vel postea there was not any Corn laden there, and traverseth the delivery Oct. o. in this case it was adjudged, That in regard the Plaintiff declared upon a Deed dated Off. 9. 38 Eliz. it shall be intended to have its effence and delivery at that time, and at no other; and if he should confess it to be delivered at any other time, it would be a departure from his Declaration, and the word tune is referred to the delivery, and not to the Date; and if it were delivered ten months after the Date, he should not have Mich. 8 Jac. in the benefit of the Corn laden before the delivery: and Sir Baptift Hix, therefore the Desendant was adjudged not to be charged cro. 2. part,

with fol. 263.

with paying for any Corn before the delivery of the Deed. the words of the Deed being, that he should pay for the Corn then laden, &c. which (then) is referred to the time of the Essence of the Deed by the delivery, and not to the

A does contract with B, and does assume to him to deliver an hundred Quarters of Barley on ship-board in such a Port, viz. at Burton Haven in Com. Ebor. and mentions no time for the Baily to be carried there, &c. A assumes to carry them there, and be at this Port with them, B agrees to pay fo much for the faid Quarters of Barley, A doth arrive with his Boat there, this is a good Contract: But in this case A is bound to be B at the said Haven, and to deliver to him the faid hundred Quarters, as aforefaid, A doth it not, albeit B hath performed his promise, and was there ready to receive it, B brings an Action on the Case and adjudged it lay.

13 Fac. Atkinson vers. Buckle. Fenkins Cent. 8.

Affirmed in

Errour, Mich.

Case 39.

Ad Leg. Rhod.

V. If Goods are fully laded aboard, and the Ship hath broke ground, the Merchant on confideration afterwards resolves not on the Adventure, but will unlade again; by the Law Marine the Freight is due.

Judg. Oleron. Leg. ult. ad Rhod.

And if the Ship in her Voyage becomes unable without the Masters fault, or that the Master or Ship be Arrested by some Prince or State in her Voyage, the Master may

either mend his Ship, or Freight another.

Digeft. Paulus,

But if the Merchant will not agree to the fame, then the 1.14. c.2. S.10. Freight becomes due for so much as the Ship hath earned: For otherwise the Master is liable for all damages that shall happen. And therefore if that Ship to which the Goods were transladed perish, the Master shall answer; but if both the Ships perish, then is he discharged.

> But if there be extreme necessity, as that the Ship is in a finking condition, and an empty Ship is passing by or at hand, he may translade the Goods; and if that Ship fink or perishes, he is there excused: but then it must be appa-

rent that that Ship feemed probable and sufficient.

Leg. qui Romæ ff. de verb. obl.

VI. If a fettime be fixed and agreed upon between the S. Callimachus, Merchant and the Master wherein to begin and finish his Voyage, it may not be altered by the fupra Cargo without special Commission for that purpose.

> If a Master shall weigh Anchor and stand out to his Voyage after the time covenanted or agreed on for his depar-

> > ture,

ture, if any damage happens at Sea after that time, he shall refund and make good all fuch misfortune; yet if a Charter party is made, that the Plaintiff shall sail from London to Lisbon with the first Wind and opportunity, &c. in confideration of which the Merchant did covenant to pay fo much for Freight, the Ship departs not with the first much for Freight, the Ship departs not with the hill Pasch. 2 Car. Wind or opportunity, yet afterwards breaks ground, and Pasch. 2 Car. in B. R. Constaarrives at her Port, the Freight in this case is become due; ble and cloberfor there is nothing can bar the Ship of her Freight but the ries versus Popnot departure, for only that in Law is traversable, being bam 161. material to avoid the payment of Freight; but to fay the Ship did not depart with the next Wind, is but a circumstance which in strictness of Law is not traversable.

If it be agreed that the Master shall fail from London Ang. Alex. & to Leghorn in two months, and Freight accordingly is a fason in dist. greed on, if he begins the Voyage within the two months, S. Callimachus. though he does not arrive at Leghorn within the time, yet

the Freight is become due.

VII. If a Ship is Freighted from one Port to another Leg. Relagati ff. Port, and thence to a third, fourth, and fo home to the Port de panis & Lig. from when she first failed, (commonly called a Trading ult. ff. de Sep. Voyage) this is all but one and the fame Voyage, fo as it be in conformity to the Charter-party.

A Merchant agrees with a Master, That if he carries his Goods to fuch a Port, he will then pay him fuch a fumm; Trin. 9 Jac. in in the Voyage the Ship is assaulted, entred and robb'd by C. B. Rot. 638. Pirates, and part of her Lading taken forth, and afterwards Bright versus the remainder is brought to the Port of discharge: yet the cooper, Brown. fumm agreed upon is not become due; for the Agreement 1. Part.

is not by the Master performed.

But by the (ivil Law this is vis major, or casus fortuitus, there being no default in the Master or his Mariners, and the same is a danger or peril of the Sea, which if not in co. 1. part 97. Naval Agreements exprest, yet is naturally implied: For Shelley's Case. most certain, had those Goods which the Pirates carried Reniger and away in stress of weather Nanielesande can't been the Fogassas Case. away in stress of weather, Navis levanda causa, been thrown Plowden com. over-board, the fame would not have made a disability as But a Pirate is to the Receipt of the fumm agreed on; for by both the not an Enemy. Common Law and the Law Marine, the act of God, or Vide Chap. that of an Enemy shall no ways work a wrong in actions private.

VIII. If a Ship be Freighted by the Tun, and she is full laden

laded according to the Charter-party, the Freight is to be paid for the whole; otherwise but for so many Tun as the Lading amounted to.

Leg. Si quis Cod. de Fustit. & Substit.

If Freight be contracted for the Lading of certain Cattle or the like from Dublin to West-Chester, if some of them happen to dye before the Ships arrival at West-Chester, the whole Freight is become due as well for the dead as the living *.

* Arg. Leg. Scio ff.de anuis legat. & leg. illis licondit. & demon. Arg. 7.

But if the Freight be contracted for the Transporting bert. in fin.ff. de them, if death happens, there arises due no more Freight than only for fuch as are living at the Ships arrival at her Port of discharge, and not for the dead t.

+ Leg.qui operas & leg. fi æ-& addes in S. Si quis mulierem ff. locat.

If the Cattle or Slaves are fent aboard, and no Agreedes S. cum qui- ment is made either for lading or transporting them, but dam & S.fin.ff. generally, then Freight shall be paid as well for the dead locati. Leg. fed as the living.

If Freight be contracted for the transporting of Women. and they happen in the Voyage to be delivered of Children on ship-board, no Freight becomes due for the Infants.

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There are 3 always made, configned to, the other for the laft for the Merchant or Lader.

The Charter-party does fettle the Agreement, and the Bills of Lading the contents of the Cargo, and binds the Bills of Lading Master to deliver them well conditioned at the place of the one to be discharge according to the contents of the Charter-party or fent over Sea Agreement; and for performance, the Master obliges to him whom himfelf, Ship, Tackle and Furniture to fee the same done the Goods are and performed.

If Goods are fent aboard generally, the Freight must the Master, and be according to Freight for the like accustomed Voyages.

If a Ship shall be Freighted and named to be of such a Burden, and being Freighted by the Tun shall be found less, there shall no more be paid than only by the Tun for all fuch Goods as were laded aboard.

If a Ship be Freighted for two hundred Tuns or thereabouts, the addition of thereabouts is commonly reduced to be within five Tun more or less, as the moiety of the number Ten, whereof the whole number is compounded.

If a Ship be Freighted by the great, and the burden of it

not exprest, yet the summ certain is to be paid.

IX. If the Ship, by reason of any fault arising from the Freighter, as lading aboard prohibited or unlawful Commodities, occasions a detention, or otherwise impedes the Ships Voyage, he shall answer the Freight contracted and agreed for.

Chase and Fones verf. Lovering Styles 220. Leg. penult. 6.9. F. de locat.

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If a Ship be Freighted out and in, there arises due for Trin. 7ac.B.R. Freight nothing till the whole Voyage be performed: So Bright versus that if the Ship dye or is cast away coming home, the Comper, Browns Freight outwards as well as inwards becomes loft.

X. If a Master Freights out his Ship, and afterwards Leg. Olerons fecretly takes in other Goods unknown to the first Laders, Leg. Naval. by the Law Marine he loses his Freight; and if it should Rhod. Art. 29 fo fall out, that any of the Freighters Goods should for fafety of the Ship be cast over-board, the rest shall not become subject to the Averidge, but the Master must make good that out of his own purse: But if the Goods are brought into the Ship fecretly against his knowledge, it is otherwise; and Goods so brought in, the same may be subjected to what Freight the Master thinks fitting.

confol. del Mera If the Ship puts in to any other Port than what she was Freighted to, the Master shall answer damage to the Mer- Leg. Olerona chant; but if forced in by ftorm, or by Enemy, or Pirates, he then must sail to the Port conditioned at his own costs.

Generally the touching at several Ports by Agreement imports Rule. not a diversity, but a Voyage entire.

XI. If Passengers having Goods happen to decease on ship-board, the Master is to inventory their concerns, and the same may a year keep; and if none claim the same, the Master becomes Proprietor deseasable: but the Bedding and Furniture of the parties become the Master's and his Mates, and the cloathing are to be brought to the Ship Balt head, and there praised and distributed amongst Leg. confoiate the Crew, as a reward for their care of feeing the body put del Mere. into the Sea.

XII. The Lading of the Ship in construction of Law is Bald.in leg.certacitly obliged for the Freight, the same being in point of ti juin in 4. Q. payment preferred before any other Debts to which the ergo God locat. Goods fo laden are liable, though fuch Debts as to time were precedent to the Freight; for the Goods remain as it were bailed for the same: nor can they be Attached in the Masters hands (though vulgarly is conceived otherwise.)

Ships deferve wages like unto a Labourer, and therefore in the eye of the Law the actions touching the same are generally construed favourably for the Ship and her Owners: And therefore if four part Owners of five shall make up their Accounts with the Freighters and receive their Hill.26,27 Care proportions, yet the fifth man may fue fingly by himself ley versus Ayles

without by Hales.

7 R.2. Statham

Abridg. 54.

In Fure Postli-

minii leg.retor.

& leg. in bello,

S. I.

Of freight and Charter-parties. Book II.

without joyning with the rest; and this as well by the

Common Law, as the Law Marine.

XIII. A Ship in her Voyage happens to be taken by an Enemy, afterwards in Battle is re-taken by another Ship in amity, and restitution is made, and she proceeds on in her Voyage, the Contract is not determined, though the taking by the Enemy divested the property out of the Owners; yet by the Law of War that possession was defeafable, and being recovered in Battle afterwards, the Owners became re-invested: so the Contract by fiction of Law became as if she never had been taken, and so the

entire Freight becomes due.

Boyce verf. Cole Hill. 26, 27

XIV. If Freight be taken for 100 Tuns of Wine, and twenty of them leak out, so that there is not above eight inches from the Buge upwards, yet the Freight becomes sen. & cole jun. due: One reason is, because from that gage the King becomes entitled to Custom; but if they be under 8 inches, Car. 2. in B. R. by some it is conceived to be then in the Election of the Freighters to fling them up to the Master for Freight, and the Merchant is discharged. But most conceive otherwise; for it all had leakt out, (if there was no fault in the Mafter) there is no reason the Ship should lose her Freight; for the Freight arises from the Tunnage taken, and if the leakage were occasioned through storm, the same perhaps may come into an Averidge. Besides, in Bourdeaux the Master stows not the Goods, but the particular Officers appointed for that purpose, quod nota. Perhaps a special convention may alter the case.

Most certain, if a Ship Freighted by the great be cast away, the Freight vanishes; but if by the Tun or Pieces of Commodity, and she happens to be cast away, afterwards part is faved; doubted whether pro rata she ought

monly transfer not to be answered her Freight.

those Goods over to the Affurors, who take them towards fatisfaction of what they pay by virtue of their fubscriptions.

XV. If a Merchant takes Freight by contracting with a Mariner that is not a Master, if loss happens, he must be contented to fit down without any remedy against the Owners; but perhaps such a Mariner for such an act may subject himself to an Action.

Cobe 4. Inflit. fol. 146.

When fuch a

Enfured com-

misfortune happens, the

> But if there be a fault committed by a Mariner which was hired or put in by the Master or Owners, there for XVI. The reparation the Owners become liable.

XVI. The Master is not bound to answer Freight to the Johannes Lock-Owners for Passengers, if they are found to be unable to "fus, 1-3. c. ...

'If a Ship by Charter-party reciting to be of the Burden of 200 Tuns is taken to Freight for a fumm certain, to be paid at her return, the fumm certain is to be paid, though

the Ship amounts not to that Burden.

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If aShip is freighted after the rate of 201. for every month that she shall be out, to be paid after arrival at the Port of London; the Ship is calt away coming up from the Downs, but the Lading is all preferred; yet the Freight is become due: for the money arises due monthly by the Contract. and the place mentioned is only to shew where payment is to be made, for the Ship deserves wages like a Mariner who ferveth by the month; and though he dies in the Voyage, yet his Executors are to be answered pro rata. Besides, the Freight becomes due by intendment on the delivery or bringing up of the Commodities to the Port

of London, and not of the Ship.

If a man Freights a Ship out, and Covenants that the Ship with the first Wind and opportunity should fail out of that Port to Cales, and the Freighter Covenants that he clerk veril Gurfor the Freight of all the Premisses would pay unto the nel, Pasch. 8 fac. Master 184 l. pro tota transfretatione omnium premissarum, in B. R. Rott. if the Master doth not aver that the Ship did arrive at the 530. Balltrod
Port of Cales, he cannot maintain an Astion against the Port of Cales, he cannot maintain an Action against the Freighter. If the Master enters into a Charter-party for himself and Owners, the Master in that case may release the Freighters without adviling with the Owners; but if the Owners let out to Freight fuch a Ship wherecf J. S. is Malter, though the Malter Covenant in the fame Charter-party and subscribes, yet his Release in that case will not bind the Owners, but the Owners release on the other hand will conclude the Master: And the reason is, for that the Master is not made a proper party to the Indenture. And so it was Rul'd, where an Indenture of Charterparty was made between Scudamore and other Owners of the good Ship called the B. whereof Robert Pitman was Master on the one party, and Vandenstene on the other party; in which Indenture the Plaintiff did Covenant with the faid Vandenstene and Robert Pitman, and bound themselves to the Plaintiff and Robert Pitman for perfor-Cc 2 mance

Scudamore & Trin. 29 Eliz. in B.R. cited in Coke 2. Instit. fol. 673.

mance of Covenants in 600 l. and the Conclusion of the al'vers. Pitman. Indenture was, -In witnes whereof the faid Robert Pitman put his hand and feal, and delivered the fame; in an Action of Debt brought upon the Bond for performance of Covenants, the Defendant pleaded the Release of Pitman; whereupon the Plaintiff demurred: And it was adjudged, That the Release of Pitman did not bar the Plaintiff, because he was no party to the Indenture. And the diversity in that case was taken and agreed between an Indenture reciprocal between parties on the one fide, and parties on the other fide, as that was; for there no Bond, Covenant or Grant can be made to or with any that is not party to the Deed, but where the Deed indented is not reciprocal, but is without a Between, &c, as Omnibus Christi fidelibus, &c. there a Bond, Covenant or Grant may be made to divers feveral persons?

CHAP.

CHAP.

Df Wireck.

the alteration of the property by the Civil Law.

II. Of the preservation of Goods Wreckt, and the punishment of those that should add misery to the condition of such persons so di-Areffed.

III. Of Goods Wreckt, their prefervation according to the Laws of Oleron, and of England, and of the punishment of those that shall not make restitution.

IV. Of contribution where the Ship perishes, and the Goods are all saved, and where not.

V. The King of Great Britain's Prerogative as in relation to Wreck and other Royalties of the

I. Of Goods Wrecht as in relation to | VI. Of Flotfam, Jetfam and Lagan, where the King shall have the Same, and whether by the Grant of Wreck the same passes; and where a Subject may prescribe.

> VII. Of Ships Wreckt and no creature in them, yet no Wreck; and of Ships forfaken, whether in Law accounted lost or wreckt, or neither.

> VIII. Of the Sheriffs duty as in relation to Goods Wreckt; and of Owners their time of claiming their property.

IX. Wreckt Goods not to pay Cu-

X. Of Wreck in the Isle of Wight, not in the Admiral without (becial words.

I. I N matters of Wreck there is as it were a Contract be-I tween them which have lost their Goods by such misfortune, and them upon whose Lands the Goods and Merchandize are driven, that the fame be restored to them, or those that claim under them. And therefore by the Civil Law it is precifely forbid, that no man shall meddle Leg. ne quid ff. with fuch Goods as are Wreckt; and fuch as are proved de incendior, nito have stoln any thing thereout, are holden for Robbers; na & naufiafor that such Goods being cast on Land and recovered out of the Sea, remain still his who was the owner thereof, Leg. 44. D. de and descend upon his Successor; neither Escheat to the acq. rer. dom. King, neither to any other to whom the King hath granted fuch Royal Priviledge.

The reason why the Laws were so strictly declared by the Romans, was, for that by the Laws of Rhodes, if any Ship had become Wreck, though all the persons were saved and alive, yet the Ship and Goods became seisible by the Cc 3

Lords: but the fame being Barbarous, was afterwards

repealed and abrogated.

The Emperour Constantine the Great fays in this case. if any Ship at any time by any Shipwrack be driven to the Leg. 1. lib. 11. shore, or touch at any land, Let the Owner have it, and let C. de Naufrag. not my Exchequer meddle with it : for what right hath my Exchequer in another mans calamity, so that it should bunt after

gain in such a woful case as this is?

And yet if no Kindred appear within a year and a day, or appearing prove not the Goods shipwracked to be theirs, the Goods come to the Exchequer even by that Law: So much that Law condemns carelefness, which is written, vigilantibue of non dormientibus, oc. And with this agree the Laws of Oleron, and the Laws of this Land, as taken out of those Imperial Laws, in that point, as is conceived.

Leg. t. in pr. de Sucend. ruin. leg. in eum cum auth.feq.de furt. Leg.3. in fir. de incend. ruin. naufrag.

II. The Civil Law was ever fo curious and careful to preserve the Goods of such miserable persons, that if any should steal such, they should pay fourfold to the Owner, if purfued within a year and a day; and as much to the Prince or his Admiral: So careful were they, and so exact in requiring restitution, that the very stealing of a Nail or the worth thereof, obliged the Thief to the restitution of all the remaining Goods. And by the Emperour Antoning it was made a Law for such fort of men, that they should be batten'd and banish'd for three years; but that was only for those of a high and Honourable rank: but those that were base and ignoble, should be scourged and fent to the Gallies or Metal Mines.

Leg. pedibus ead.

Crim.

Arg. leg. faccur-And the preventing of help to fuch shipwrackt persons larii de Extrod. was punisht with the same suffering as a Murderer.

The like for those that shall put forth any Treacherous Lanthorn or Light, with intention to subject them to dan-

ger or shipwrack, was punished with death.

And though no harm happens, yet he may be punished: Per leg. incend. tuin. naufrag. hence it is, that Fishers are forbidden to fish with Lights in Leg. ne piscator. the Night, for fear of betraying Sailers. And here I

cannot omit the great and pious care that His Majesty hath had in his Directions about Light-Houses and Lanthorns, and other special Sea-Marks; but more especially in his Erecting at his own Princely Charge that most excellent Light-House near Goldston by Yarmouth, which both for Height, Curiofity, and Form is not inferior to, if not excelling all or most in Christendom.

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III. And as the Emperour and other Maritime Kingdoms had in some fort abrogated and repealed that cruel Law, and subjected the Violators to punishment for the inhumanity offered to such distressed persons: so our Famous King Richard returning from the Holy War, in his own experience at Sea became fenfible of the miferies which Merchants and Mariners at Sea underwent, their lives being always within few inches, often within an hairs breadth of death; and having consideration of their calamitous and distressed state, in his Voyage resolved to revoke that Law, and at Oleron in the Bay of Aquitane (then part of his Dominions) as Soveraign Lord of the Ocean and all those Maritime Kingdoms, did there amongst other good Marine Laws declare, That if any person or libing thing escaped out of any wrecked Ship to land, it should not be wreck nor confiftated to bim or bis fuccestor, as it was before, though all the men escaped alibe. For before that both in England and in * Normandy * Brafton, lib.2. the + Crown was entituled to shipwrackt Goods, and the + custum Nor-King Jure Gentium (indeed according to the Rhodian Law) man. cap. 17. became Heir unto them, which otherwise fure naturali were conceived to be in bonis nullus, pertaining to no Owner: But now that Valiant and Religious Prince refolved no longer to embrace to cruel a Prerogative by the stripping the distressed Mariners of those rags of their Estates, which the mercy and modesty of the Waves and Winds had left them; and therefore in the month of October at Missana, in the presence of many Archbishops Roger Hoveden. and Bishops and others, he then for ever quitted the Royal in the latter Claim to Wrecks, which afterwards was declared and part of his Anpublished at Oleron in his own Territories; fo that if any nals, fol. 678. man out of the Ship came alive to shore, the property of the chron. Coll. fol. shipwrackt Goods was still preserved to the Owner: which 1887. Royal condescension was so enlarged by our succeeding Kings, 'That if a Man, Dog, or Cat escapes alive out of the Ship, neither the Ship or other Vessel, nor any thing therein shall be adjudged Wreck, but the Goods shall be faved and kept by the Sheriff, Coroners, or the Kings Bailiffs, and delivered to the Inhabitants of the Town where the Goods are found; fo that if any within a year and a westm. 1. cap. 4. day fue for those Goods, and after prove that they were 3 E. 1. Naufrahis at the time of the shipwrack, they shall be restored to pertin.

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him without delay: but if not, they shall be seized by the faid Sheriff, Coroners, or Bailiss for the Kings use, and shall be delivered to the Inhabitants of the Town, who shall answer before the Justices for the Wreck belonging to the King; but this good Law extends not to Pirates, Robbers, Sea-Rovers, Turks, or other Enemies to the Catholick Faith.

per Leg. Oleron, cap. 47.

Where the Wreck belongs to another, he shall have it in like manner; and if any be attainted to have done otherwise, he shall suffer Imprisonment, make Fine to the Kine, and yield damage also.

If a Bailiff do it, and it be disallowed by his Lord, the Bailiff shall answer for it is he hath wherewithal; but if not, the Lord shall deliver his Bailiff's body to the

King.

Reg. 37. Naval.

IV. If the Ship perishes only, and the Goods are safe, in that case the Goods ought to pay a proportion of a sist or tenth penny, according to the easie or difficult winning or saving of the said Goods; rich Goods, as Gold and Silver, and Silk, pay less than Goods of great weight and cumber, being in less danger, unless it were a Wreck going into a Port, which the Skipper was not bound for, there è contra, then the Skipper is not to be considered.

V. The King shall have Wreck of the Sea, Whales, and great Sturgeons taken in the Sea and elsewhere throughout the whole Realm, except in places priviledged by the

King.

Sir Henry Conftables Case, Coke 5. part. fol. 107. VI. By the Grant of Wreck will pass Flotsam, Jetsam, and Lagan, when they are cast upon the land; but if they are not cast upon the land, the Admiral hath Jurisdiction and not not the Common Law, and they cannot be said Wreck.

Wreccum Maris, are fuch Goods only as are cast and left upon the land by the Sea.

Faber & alii inst. de rer. divis. Sect. pen. Flotsam, is when a Ship is funk or otherwise perished, and the Goods float upon the Sea.

Jetsam, is when the Ship is in danger to be funk, and for lightning the Ship, the Goods are cast into the Sea, notwithstanding which the Ship perisheth.

Leg. 7. D. pro derelicto. Lagan vel Ligan, is when the Goods being heavy, are cast into the Sea before the Ship perishes, which by the prudence of the Master or Mariners, who have an in-

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tent to fave them fo funk, as that they may come at them again, in order to which they fasten a Buoy or other light matter that may signifie to them where they lye, if Providence should bring them in a condition to retake them.

The King shall have Flotsam, Jetsam, and Lagan when 46 E. 3. 15. the Ship perisheth, or when the Owners of the Goods F. N. B. 112. are not known; but when the Ship perisheth not, è Anth. Omnes percentra.

A man may have Flotsam and Jetsam by the Kings Grant, nibus acq. per and may have Flotsam within the high and low Water. Lig. Oleron. mark by Prescription, as it appears by those of the West Countries, who prescribe to have Wreck in the Sea, so fol. 107. far as they may see a Humber Barrel.

VII. If a Ship be ready to perifh, and all the men there cote 2. Inflit. in for fafeguard of their lives leave the Ship, and after the fol. 167. for faken Ship perifheth, if any of the men be faved and Leg. 8. D. de leg. come to land, the Goods are not lost.

Rhod. de jastu.

A Ship on the Sea was pursued by Enemies, the men for fafeguard of their lives for sake the Ship, the Enemies take the Ship and spoil her of her Goods and Tackle, and turn her to Sea; by stress of weather she is cast on land, where lielmor siphake it happened her men arrived: It was Resolved by all the co.2. in life. Judges of England, That the Ship was no Wreck, nor Leg. 43. S. 11. lost.

VIII. If Goods are cast up as Wieck, and it falls out Pl. com. 466. they be bona persture, the Sheriff may sell them within the year, and the sale is good; but he must account to the true Owners.

Owners claiming the Wreck must make their proof by their marks or Cocquets, by the Book of Customs, or by the Testimony of honest men; and if the Wreck belongs F. N. B. fol. 12. to the King, the party may sue out a Commission to hear and determine, and that by the Oaths of twelve men; or else he may bring his Action at Law, and make out his proof by Verdict; but such Action must be brought within the year and day.

Note, Flotfam, Jetsam and Lagan, are Goods on or in DD. diplo. & the Sea, and belong to the King, who by Charter hath de Off. Admir. granted them to the Lord Admiral.

IX. If Goods are wreckt on the shore, and the Lord in Moor, fol. 24. having power, takes them, he shall not pay Custom, nei But since adjudged in C. B. upon a Special Verdict sound at St. Edmunds-Bury in Suffolk.

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Shep. virsus Gof- ther by the Common Law nor by the Statute; for at the nold, Hill. 23. Common Law wrecked Goods could not be charged with 24 Car. 2. Rott. Custom, because at the Common Law all Wreck was wholly the King's, and he could not have a small duty of Custom out of that which was all his own, and by Westm. 1. where wrecked Goods belonged more to another than to the King, he shall have it in like manner, that is, as the King hath his.

Now Goods that are chargeable with Custom, according to the Act of Tunnage and Poundage, must have these properties.

1. They must be Goods which shall come or be brought

into the Ports or places of the Kingdom.

2. They must come or be brought into such Ports or places as Merchandize that is for sale, and to that end; for there can be no other conception of Goods brought as Merchandize.

3. They must come and be brought as Merchandize, and for sale by the Kings natural born Subjects, or by Strangers and Aliens, as distinguisht from the natural Subjects.

4. The Duty payable to the King is to be measured by the quality of him that imports the Commodity, that is, if the Importer be a natural Subject he pays less to the King, and if an Alien, more.

5. All those Goods charged with the Duty by the Statue, so to come or be brought into the Ports or places of the Kingdom, are to be Foreign, as of the growth of

France, the Levant, Spain, Portugal, Germany, &c.

Whence it follows, 1. That Goods of Foreign growth, and which by their kind are to pay Duty, if they shall come or be brought into the parts or places of the Kingdom, neither by the Kings natural born Subjects nor by Aliens, they are not chargeable with the Duties mentioned in the

2. If they are not brought into the Ports and places of the Kingdom as Merchandize, viz. for fale, they are not chargeable with the Duty; but Wines or other Goods coming or brought into the Realm as Wreck, are neither brought into the Kingdom by any of the Kings Natural torn Subjects, nor by any Strangers, but by the Wind and Sea; for such Goods want a Proprietor until the Law appoints one.

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3. Wrecked Goods are not brought into the Kingdom, being cast on shore, as Merchandize, viz. for sale, but are as all other the native Goods of the Kingdom, indifferent in themselves, for sale or other use at the pleasure of the Proprietor.

4. All Goods Foreign or Domestick are in their nature capable to be Merchandize, that is, to be fold; but it follows not thence, that wheresoever they are brought into the Kingdom, they are brought as Merchandize, and to be fold, and should pay Custom; for they are transferred from place to place, more for other uses than for

fale.

5. All Goods charged with the Duty of the Act must be proprieted by a Merchant natural born, or Merchant Alien, and the greater or less Duty is to be paid, as the Proprietor is an Alien or Native Merchant; but wrecked Goods are not the Goods of any Merchant natural born, Alien or Denizen, whereby the Duty payable should be either demanded, distinguisht, or paid: therefore a Duty impossible to be known can be no Duty; for Civilly what

cannot be known to be, is as that which is not.

6. All Goods subject to the Duty of Tunnage and Poundage may be forfeited by the disobedience and misbehaviour of the Merchant Proprietor, or those trusted by him, As unshipping before payment, or lawfully tendring or agreeing for, &c. But wrecked Goods cannot be imported into any Creek or place of the Realm by way of Merchandize, and unshipped to be laid on land; for if so imported and unshipped to be laid on land, it is no Wreck, and therefore are not Goods forfeitable by the misbehaviour of any within the Act, and consequently not Goods intended to be charged with the Duties by the Act.

Goods drowned or lost in passing a Ferry, a great River, or an Arm of the Sea, are not to be said to be exported, though they be carried to Sea; but Goods exported are such as are conveyed to Sea in Ships or other Naval carriage of mans artisice, and by like reason Goods imported must not be Goods imported by the Wind, Water, or such inanimate means; but in Ships, Vessels, and other Conveyances used by reasonable Agents, as Merchants, Mariners, Sailers, &c. Whence it may be

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concluded, that Goods or Merchandize imported within the meaning of the Act, can only be fuch as are imported with deliberation and by reasonable Agents, not casually and without reason; and therefore wrecked Goods are no Goods imported within the intention of the Act, and consequently not to answer the Kings Duties; for Goods as Goods cannot offend, forfeit, unlade, pay Duties, or the like, but men whose Goods they are: And wrecked Goods have no Owners to do those offices when the Act requires they should be done, therefore the Act intended

The verywords of the Lord Howard's Patent,in 28 Eliz. in Rott. Admir. m. 10.

not to charge the Duty upon such Goods. The Admirals of England, ut magnis Admirallus Anglia, Hibernia, Wallia, ac Dominiorum & Insularum earundem, Villa Calisia & Merchiarum ejusdem, necnon Gasconia, Aquitania, classium & marium dictorum regnorum Anglia prafectus generalis, &c. which are the words of their Patents used at this day, do claim all Wrecks arising from any of those places, by virtue of their Grants.

I E. 2. m. 6. num. 6.

X. King Edward the Second in the first year of his Reign, by his Charter granted the Castle of Carisbrook, with all the Lands and Tenements in the Isle of Wight, formerly belonging to Isabella Fortibus Countess of Albemarle, to his great Favourite Peter de Gaveston and Margaret his Wife, and the Heirs of their two bodies begotten. (together with fundry other Castles and Lands) and commanded Nicholas de Rosco to put him into actual posfession, and likewise commanded Robert de Sanson, Keeper of the Forest of Parkhurst in that ist, to be intendent to them for the Farm he had granted him for life for the custody thereof, which being after soon refeized into the Kings hands, he granted this Castle with all its Services, and all his Lands in that Isle to Edward his Son and his Heirs Kings of England, and afterwards for the afcertaining what did of right belong to the same Castle, an Inquisition went out, by which it was found inter alia qu Inquift. de An. togechum maris pertinens ad didum Caftrum balet pann

Pat. 20 E. 2. m. 10. Intus pro Edwardo filio Regis.

47 H. 3. n. 32. . 45 .

So that by the general Patent of the Admiral will not pass the Wreck of this Ise, without special words granted in the Patent.

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Note, If the Wreck happened, or was occasioned by Leg. 3. S. I. D. reason of any fault or negligence in the Master or Manut caup. St. riners, the Master must make good the loss; but if the lib. I. S. 4. D. same was occasioned by the act of God, to avoid an Enemy de obl. & ast. leg. 26. S. 6. D. or Pirate, and the like, there he shall be excused.

Quia via major providentiam & industriam bumanam superat, nift culpa casum pracesseit.

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CHAP. VI.

Of Aberidges and Cantributions.

I. Of Goods and Merchandize when Subject to be cast over-board. II. Of the account rendred of such

ejected Goods, and by whom.

III. Of the Ancient Laws of Enggland in reference to Such Ejeet-

IV. What Goods must come into the Averidge, and what are exempt. V. The Master discharged by such

acts by the Common Law. VI. The Ships Gear or Apparel, whether within the Averidge.

VII. The residue of the Goods where tacitly obliged to answer the Ave-

VIII. Of Goods remaining on Shipboard spoiled by reason of the ejecting of others, where subject to the Averidge.

IX. Where Ship and Lading are both

made liable to the Averidge. X. Of misfortunes not subject to an Averidge.

XI. Where the remainder of the Goods are exempted from the Averidge, and the damage of the ejected Goods falls on the Master.

XII. Damage to the Ship where the Lading contributes, and the Standard rate in Contributions.

XIII. The Master becomes a Captive for the redemption of Ship and Lading, where liable to the Averidge, and where discharged.

XIV. what Goods are subject to the Averidge.

XV. Contribution for Pilotage, and where the remaining Goods not Subject to Averidge.

XVI. Rules general for setling the Averidge.

Leg. Rhod. de plet.

I. Hips being Freighted and at Sea, are often subject to forms and other accidents, in which by the Ancient Laws and Customs of the Sea, in Extreme necessity Bracton. lib. 2. the Goods, Wares, Guns, or what soever else shall be thought fol. 41. b. n. 3. fit, may in fuch Extremity be flung over-board; but then the Master ought to consult with his Mariners, who if they confent not, and yet the storm and danger continues, the Master may command notwithstanding the casting over-board what he shall judge most fitting for the common fafety of the rest. So likewise Goods coming from infected Towns or places may be cast over-board; and if an Action be brought at Common Law, the Defendant may justifie the same, by pleading the special matter.

46 E.3. fol. 15.

Leg. Oleron, cep. 8.

If there be a super Cargoe, a request ought to be made to him to begin first; but if he refuses, the Mariners may proceed.

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II. If the Ship fo fortunes as to out-weather the storm, Lig. confolation and in fafety arrives at her Port of discharge, the Master del Mere. and most of his Crew must swear that the Goods were cast over for no other cause but purely for the Safety of the Ship Leg. Wishicans. and Lading. The custom of clearing of that Point varies Artic. 38, 39. according to the feveral Countries or places they ar-

III. King William the Conquerour, and Henry the First, Ligis Guliel. & made and ratified this Law concerning Goods cast over. & H.I. c.98.de board by Mariners in a storm, in imitation of the Ancient Pattis ad legim. Rhodian Law, De jact.

Di ego jecero res tuas de Rabi ob metum moztis, de Selden ad Eadboc non potes me implacitare, nam licet alteri damnum merum & Note interre ob metum moztis quando periculum ebadere non & Spicilizium potest. Et st de boc me mesces, qu' ob mesum moztis mil fol. 183. fecifie de comespatogai. Et ea que in nabi restant dibi- Anglorum legidantur in communi fecundum caralla, a ft quis jecerit bus, fol. 167. catalla extra nabim quando necessitas non eregerit, ea reffituat.

IV. The Ship arriving in fafety, the remainder must come into the Averidge, not only those Goods which pay Lig. 1.02. Freight, but all those that have obtained fafety and pre- leg. Rhod. & fervation by such Ejection, even Money, Jewels, and leg. Oleron. Cloaths, and fuch like, are not exempted.

But those things which are born upon a mans body, Victuals, and the like, put on shipboard to be spent, are totally excluded from the Contribution.

The Master ought to be careful that only those things Lig. withings of the least value and greatest weight be flung over- drie. 20, 21.

V. As this Law doth take care that this common Calamity should be born by all the parties interessed by a general Contribution, fo the Common Law takes notice of the misfortune, and makes provision to Indempnishe the 12 74c. in B.R. Master; and therefore if the party Owner of such ejetted Bulfired. 2 part, Goods, shall bring an Action against the Master or Own fol. 290. Bird ers of the Vessel, the Defendant may plead the special versus Astron. matter, and the same shall bar the Plaintiff.

VI. But if the Ships Gear or Apparel be loft by florm, Lig. t. ff. de exthe same is not within the Averidge, but is accounted like ercit. action. unto a Workman breaking or spoiling his Tools, except in the avoiding of a danger, as the flinging the Maft

Di Aberidges and Contributions. Book II.

over-board, or the flipping the Tow-Anchor or Boat.

Goods brought fecretly in the Ship against the Master or Purfers knowledge, if ejected, no Contribution is to be had.

L. amille & Oleron.

This Order is observed generally in the rating the remainder of the Goods by way of Contribution.

Fohannes Locinius l.2. c.7. de jactu. & 8. de contributione.

If they chance to be cast over board before half the Voyage performed, then they are to be esteemed at the price they colt; if after, then at the price as the rest or the like shall be fold at the place of discharge.

Leg. I. del Mer. Si non fortem de cond. in de.

VII. As the Common Law looks upon the Goods and exempt. & leg. Cargo as a pawn or pledge for the Freight, so the Marine Law looks upon them likewise as a security for the answering the Averidge and Contribution, and that the Master ought not to deliver the Goods till the Contribution is fetled; the same being tacitly obliged for the one as well as the other. Ad Leg. Rhod. l. 2. Si non conservatis.

Leg. Navis 4. ad leg. Rhod. And Vinius's Commentary, fol. 235.

VIII. If through the rifling of the Ship, or the casting or unlightning the Ship, any of the remaining Goods are spoiled either with wet or otherwise, the same must come in to the Contribution for so much as they are made worfe.

IX. If it falls out that a Ship entring into a Port or Chanel cannot make way, and there be a lightning or disburdening of the Ship, then the Contribution falls two parts to the Lading, and one third to the Ship, except the Ship furpass in value the Lading, or that there is some bad quality in the Ship it felf.

L. I. verse. quod

convenit depos.

Leg. 9. S. 2. ad

exhib.

But to prevent that ambiguous Question, if the party Covenants that the Goods shall be delivered at the Port Covenanted and appointed, then Condition makes Law.

So for the Pilots Fee and raising of the Ship off ground when there is no fault in the Master.

Leg. quemadmodum parag. Si navis ad leg. Aquilia.

X. If two Ships happen to encounter and crofs each other, and the Crew Iwear their Innocency, Contribution must be made by a just equality; but if one perishes, as there can be no proportion of the loss, so no Contribution. The reason that is given, for that otherwise a Skipper might of purpose set an old weak Ship against a strong Ship, and by that means hedge himself into a Contribution and recompence. However this bars not the Owners from bringing their Action against the negligent Master,

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by which means he may recoop himself in damage, if it Eod. leg. 18 # happens at Sea, the Action by the Civil Law is called Legis 6. num. 52.

3. Inft. fol. 146.

If such a missortune happens in the night at Sea, the Tompkins, No. Goodwyn versus party, if he will compleatly arm himself for his recovery, Rep. ought to prove, that he made out Light or Fire, or otherways gave notice by crying or calling out.

XI. If it falls out in the Ship or Veffel by the indifcreet Luft Sernus & stowing or lading thereof above the Birth-mark that such 27. & Si. 23 Ejection happened, in that case it has been used by the Ma. ad leg. Aquil. rine Laws no Contribution to be made, but fatisfaction is to be answered by the Ship, Master or Owners.

XII. If to avoid the danger of a storm, the Master cuts Ad Reg. Rhada down the Masts and Sails, and they falling into the Sea leg. 2. S. Si are loft, this damage is to be made good by Ship and La. confervatis, ding pro rata: otherwise if the case happens by storm or

other casualties.

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No Contribution is to be paid in case one Ship strike against another whereby damage happens, but full satisfaction is to be answered the Merchant in case of fault or miscarriage in either; or an equal division of the damage, in case it happen by a casuality, as above. If a Lighter or Skiff, or the Ships Boat into which part of F. de lee. Rhod

the Cargo is unladen for the lightning of the Ship, perish, leg. Navis onus. and the Ship be preferved, in that cale Contribution is to leg. Navis ad be made; but if the Ship be cast away, and the Lighter, leg. Rhod. de ja-Boat or Skiff be preserved, there no Contribution or Ave- Moore, fol. 297.

ridge is to be had, it being a Rule, No Contribution but where the Ship arrives in safety.

XIII. If a Ship happens to be taken, and the Master to Leg. Rhod, de jaredeem the Ship and Lading out of the Enemies or Pirates etur. 1.2. Singo hands, promises them a certain summ of money, for per- vis à Piratis. formance whereof himself becomes a Pledge or Captive in the custody of the Captor; in this case he is to be redeemed at the costs and charges of the Ship and Lading, and

money if there be any in her, are contributary according to each mans interest for his ransom.

So where a Pirate takes part of the Goods to spare the Moore, fol. 297: rest. Contribution must be paid. But if a Pirate takes by violence part of the Goods, the versus Palling-

rest are not subject to Averidge, unless the Merchant hath tonmade an express agreement to pay it after the Ship is robb'd:

Chapter.

Of Aberidges and Contributions. Book II

Grot. de introd. But if part of the Goods are taken by an Enemy, or by jur. Holl. par. 29. Letters of Marque and Reprizal, è contra. Sueton jur. Naut. So likewise in storm, if the same is done for preserva in the end of the thirteenth tion of the remainder.

XIV. In Ejectment the Master or Purser of the Ship shall contribute for the preservation of the Ship, and also the Passengers for such Ware as they have in the Ship, be it Pearls, Precious Stones, and fuch like; and Passenger that have no Wares or Goods in the Ship, yet in regard they are a burden to the Ship, Estimate is to be made of his and their Apparel, Rings, and Jewels towards a Con tribution of the loss; and generally all things in the Ship except the Victualling and Provisions of the Ship, and the bodies of men (unless fervants) must bear a proportional ble share in the Contribution.

The Estimate being made of the Goods lost and saved the price is to be fet down not for how much they were bought, but how much they might be fold at the time when the Ejectment was made; and if any thing be flung into the Sea and endamaged; and afterwards is recovered

again, yet Contribution is to be made only for the damage.

XV. Contribution is to be paid for the Pilote's Fee that hath brought a Ship into a Port or Haven for her fafeguard (it being not the place she was designed for) so to raise her off the ground when there is no fault in the Master.

If a Master of a Ship lets out his Ship to Freight, and jur. Holl. 3. 29. then receives his complement, and afterwards takes in Vinius and Pe- Goods without leave of the Freighters; and a storm ari fes at Sea, and part of the Freighters Goods are cast over-Laws of Rhodes, board, the remaining Goods are not subject to the Ave ridge, but the Master must make good the loss out of his own purfe.

> The Goods which are lost are to be valued, and the Goods faved are to be estimated, which being known, proportionable value is to be contributed by the Goods laved, towards reparation of the Goods ejected, or call

overboard.

Locinus, lib. 2. In which regard is always had, not to what might be cap.8,9,10, 11. got by the Goods loft, but what the intrinsick damage is by the loss of the same; the which are not to be estimated what they might have been fold for, as what they cost or were bought for.

Peckens ad leg. Rhod. de jact. fol. 196, 197, 198.

Grotius Introd. keus Commentaries on the

fol. 236.

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But now the Custom is general, the Goods faved and The Custom of loft, are estimated according as the Goods faved were Places varies fold for; Freight and other necessary charges being first this Modus of Estimating, the deducted.

If there were Plate, Tewels, or the like, in a Trunk, Cheft, by Merchants Pack or Bale, at the time of their Ejection, if there be a and Mariners Super Cargoe he ought to give notice by discovering of the indifferently fame to the Master or Mariners, otherwise he shall be the Court. answered in the Contribution no more than the bare ex Ad Leg. Rhods trinfick value appeared to be; but the Affurers will hardly S. ult. Inflit. de fare fo well.

If Contribution shall be setled, and the Merchant will 9.5. Mt. de acq. not agree, the Master may detain the Lading, for the fame is as tacitly obliged to answer that as the Freight; And if at the Common Law the Merchant should bring an Action, the Defendant shall barr him by pleading the special matter.

If Goods are cast overboard, and afterwards are reco- ff. ibid. leg. Na: vered, Contribution ceases, saving for so much as they vis, S. cum and are damnified and made worse by reason of such Eject-tem.

Note, Goods cast overboard to lighten the Ship make Leg. 25. D. de

no derelict. And though fuch necessity seems to subject the Lading S. Si jactum. to Ejectment to prevent the ruine and destruction of the persons, yet some Lading seems excepted, and therefore Cannon and other Instruments or Provisions consigned to Bacon Max. folrelieve a City, ought not to be flung overboard; for in 17-privilegium fuch case the Law imposeth on every Subject, that he nonvalet contra present Service of his Prince hefers the form the form the form prefer the urgent Service of his Prince, before the fafety of his life.

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CHAP.

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CHAP. VII.

Di Policies of Adurance.

I. Affurances by whom first intro-

II. Affurances the nature of them.

III. How esteemed of by Law.

IV. The various ways of Ensuring, and on what.

V. Affurance when efteemed most dangerous, and of fraudulent Policies.

VI. Of the Receipt of Premio, and the custom of abatement on losses.

VII. Policies that now ensure against all the accidents of Heaven and Earth.

VIII. A Ship ensured generally, whether the fame includes the Cargo; and whether it is necessary in the Policy to mention the particular

IX. If the Master is discharged of the damage, whether the Ensurer may be made liable.

X. A Ship ensured from a Port, and The is burnt before ber departure, whether the Affurers are made liable.

XI. Goods ensured in one Ship, are afterwards in the Voyage put into another, the fecond miscarries, whether the Affurers are made liable. XII. A man ensures more than the value of the Cargo, the Custom in fuch cafe.

XIII. A Ship is ensured from one Port to another, and there to be landed; the Cargo after arrival is fold, and before landing is burnt, whether the Affurers shall be made answerable.

XIV. A Ship ensured from one Port to (Mank) being in time of war) taken, whether the Affurers fhall

XV. Of the Ensured's renouncing after a loß; and what operation the fame has by custom.

XVI. Of the Office erected by the Statute of 43 Eliz. what power; of the Jurisdictions claimed by those at common Law and the Admiralty.

XVII. What power and authority was given by the Statute of 42 Eliz. to that Court.

XVIII. What things it was deficient in, and holpen by the Statute of 14 Car. 2. cap. 22. and of their authority and power general at this day.

XIX. Of the advantages that feem to accrue to publick Affurances, different from private ones.

Cafar. lib. 25. cap. 18.

Satifd. cog.

In vita Claud. I. T is conceived by Suetonius, that Claudius Cafar was the first that brought in this custom of Assurance, by which the danger and adventure of Voyages is divided, * Leg. 1. ff. qui repaired and born by many persons, who for a certain fumm by the Spaniard called Premio, affure Ship or Goods.

Gratius de Fure or both, or a proportion, according as the Policy is *. Bell ac Pacis, II. Assurances are either publick or private. Publick . lib. 2. cap. 12. when 5. 3. in fin.

when they are made and entred in a certain Office or Court, commonly called the Office of Affurance on the Royal Exchange in London; and the same are called publick, for that it is free for any man to refort and fee what another hath affured upon his Adventure.

Private is, when an Affarance is made, but the Enfured keeps the same secret, not deeming it fit that any should fee or know their Cargo or Adventure, or what Premio they have given, or affirance they have made; and the fame being never entred in the Office, is known by the name of a Private Assurance.

III. By the Common Law they are both of the same validity, as in reference to obtain fatisfaction from the Enfurers, if loss or damage should happen to the Adventure.

But by the proceedings erected by Statute of 43 Eliz. 43 Eliz. 6. 12 cap. 12. only those that are entred in the Office of that

Court, can be fued or determined there.

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IV. Assurances are of various forts, some being to places certain, others general: those that are made to places Leg. 4. 5. D. de certain, are commonly upon Goods laden or to be laden Naut. forn. aboard outward, and until the same Adventure shall be laid ashore at such a Port.

Or upon Goods laden or to be laden homeward in fuch a Ship till the Adventure shall likewise be landed.

Or else upon Goods out and in, with liberty to touch Johannes Locinius, l. 2. c. 5. at fuch Ports as are mentioned in the Policy.

So likewise on Ships that go Trading Voyages, as round \$. 5, 6. to Cales; and that it shall be lawful after the Ships delivery there, to take in at the same Port another Cargo, and with that proceed to the West-Indies or other parts, and back again to Cales, and from thence to London, this Policy being general and dangerous, procures feldom fubscriptions, or at least very chargeable ones.

As Goods and Merchandize are commonly Enfured, fo Sautor. p. 3. likewife are the Ships Tackle and Furniture; but in regard num. 13. sq. 43. there feldom happens a Voyage but somewhat is missing jegg. or loft, the Premio commonly runs higher than for Mer-

chandize. Affurances may be made on Goods fent by Land, fo likewise on Hoyes, and the like, and may be made on the wick. Mich. heads of men; as if a man is going for the Streights, and 29 car. 2. in perhaps is in some fear that he may be taken by Mores or B. R.

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Turkish Pirates, and so made a Slave, for the redemption of whom a ransom must be paid, he may advance a Premia accordingly upon a Policy of Assurance; and if there be a Caption, the Assurer must answer the Ransom that is

fecured to be paid on the Policy.

If such Ensurances are most dangerous when there are these words inserted lost or not lost; which is commonly done when a Ship hath been long missing, and no tidings can be had, the Premio (especially in time of War) will when intimation is given of the loss.

V. Those Assurances are most dangerous when there are these words inserted loss or not loss; which is commonly done when a Ship hath been long missing, and no tidings can be had, the Premio (especially in time of War) will run very high, sometimes 30 or 40 per Cent'; and though it happens at the time that the subscription is made the Ship is cast away, yet the Assurances are most dangerous when there are these words inserted loss or not loss; which is commonly done when a Ship hath been long missing, and no tidings can be had, the Premio (especially in time of War) will run very high, sometimes 30 or 40 per Cent'; and though it happens at the time that the subscription is made the Ship is cast away, yet the Assurances.

But if the party that caused the Assurance to be made faw the Ship wreckt, or had certain intelligence, such subscription will not oblige, the same being accounted a

meer fraud.

Locinius, lib. 2.

Arthur Stockden
of Stockden's
Cafe, Mich. 26
Car. 2. in B. R.
Afterwards
convicted by
Information
for the Fraud,
Term. Santii
Hillarii fequen.
in B. R. Vide
Liv. Lib. 24.

So likewise if the Assured having a rotten Vessel shall assure upon the same more than sine is worth, and afterwards give order that going out of the Port, she should be sunk or wreckt; this will be fraudulent, and not oblige the Assurers to answer.

In the Year 1678. one Nownham Perkins and Stoakes were Owners of a Vessel called the May Flower Ketch, the Vessel coming laden with Wines on the account of one Fierbraffe and Stone to the Ifle of Wight, Perkins being then in the fame place, contrives with one Ivy the Malter to fell the Freighters Goods privately, and that being effected, to go out to Sea some small distance from the Isle, and there privately fink the Vessel, and pretend she struck and then foundred by the extremity of weather. Plot being laid, Perkins hastens up to London, and makes a Policy of Affurance on the Vessel: which being done, remits his Orders to Ivy to put in execution the contrivance, and accordingly the Goods, or the best of them, being disposed of, stands out to Sea, and then with his own hands, by the force of an Iron Crow, makes a hole in the hold, and then in his long Boat (the Crew perceiving the Veffel to be finking) conveys himfelf and Mariners afhore. Toy remits up advice of the loss, and Perkins (as if he had never known any thing of the matter) demands the monies affured with great confidence, and thereupon brings an Action for the fame; but before that Cause came to a Tryal,

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Tryal, Fierbraffe and Stone bring a Trover against Perkins, and thereupon the whole practice came out, and a Verdict Hill. 3. 32 Car. was had against the Defendant, with this further, That 2. E. R. if Perkins would proceed on his actions on the Assurance, he must expect that this practice and fraud of his would totally poyfon his Assurance, and thereupon being well advised, never proceeded.

VI. Few or scarce any Ensure the whole Ship, but the The subscripti-VI. Few or scarce any Ensure the whole ship, out the on mentions as fubscriptions being for summs certain, as 50 l. or 500 l. if the Premio at the Premio then current, which when the Adventure is had been aduborn they receive; but if a loss happens, the Premio is de- ally received, ducted together with the usual abatement: fo that the butit is seldom Ensured receive much about 80 per Cent. if a loss hap, done till the

pens. VII. The Policies now adays are fo large, that almost all those curious Questions that former Ages and the Civilians according to the Law Marine, nay and the Common Lawyers too, have controverted, are now out of ve que in nadebate; scarce any misfortune that can happen, or pro-vesimposiffent, vision to be made, but the same is taken care for in the ab hostium tem-Policies that are now used; for they Ensure against Hea- pestatisque vi ven and Earth, stress of Weather, Storms, Enemies, Pi publico periculo rates, Rovers, &c. or what soever detriment shall happen * toribus cirta luor come to the thing Enfured, &c. is provided for. .

Adventure is

cra proposuit sufcepto in le dam-

no, fi cui quid per tempestates accidiffet, Livius, lib. 23. cap. 25. Vide Zafius in Commentario ad Digesta, tit. pro Socio, num. 25. * Suo nomine periculi, de quo fit cautio, comprehenditur omnis casus qui accidit in mari, à tempestate, ab hostibus, prædonibus, Reprisalis, ut vocant arreftis aliifq; modis ufitatis & inufitatis citra fraudem & culpam contrabentium, aut domini mercium vel navis. Grotius de Jure Holl. part. 24.

VIII. If a Merchant Enforces fuch a Ship generally, and Locinius, lib. 2. in the Policy it is expressed of such a Burthen, the Ship cap. 5.8.7,9,104 happens then to be laden and after miscarries, the Ensurer shall not answer for the Goods, but only for the Ship.

IX. It matters not in the Policy whether the particular Wares and Goods are named, but generally upon the principal Wares, and all other Commodities laden or to be laden for the Enfured or for his account, or for any

X. If a Ship be Enfured from the Port of London to Cales, and before the Ship breaks ground takes fire, and is burnt, the Assurers in such case shall not answer, for the Adven-Dd 4

ture begun not till the Ship was gone from the Port. of London; but if the words had been, at and from the Port of London, there they would upon such a misfortune have been made liable.

Note. The Port If fuch an Affurance had been from London to Cales, and of London ex- the Ship had broke ground, and afterwards been driven tends from the by storm to the Port of London, and there had took fire, in the Ifle of the Enfurers must have answered; for the very breaking Thanks, over in of ground from the Port of London was an inception of a Line to the the Voyage.

Nafe in Effex, & from thence to London-Bridge. Rot.

9 H. 6. 14. in Quare impedit, 3 R. 2. Tryal 54. 34 H. 8. Tit. \$07.

Mich. 30. 31 Eliz.

* That has bin much doubted; and opimions of the Court have geherally inclined against the Affurers. Legult. ad Rhod. lib. 14. tit. 2. 5. 19.

Vide Grot. In-212. 23. And indeed is more Merchants than Law.

On the other hand, if a man at Cales ensures a Ship from thence to London, if a loss happens, the Assurer, if he comes into England, shall answer by the Common Law; Scacar. 19 car. for though the place where the Subscription was made, and the Premio given was in a Foreign Country, yet that is not material, for the Action that is brought is grounded on the promise which is transitory and not local, and fo it was adjudged where the Defendant in confideration of 10 1. had ensured. That if the Plaintiffs Ship and Goods did not come fafe to London, he would pay 100 l. afterwards the Ship was robbed on the Sea, and in an Action brought for the 100 l. the Plaintiff had Judgment, notwithstanding the robbery or loss was on the main Sea, and the Subscription out of the Realm.

XI. If Goods are Enfured in fuch a Ship, and afterwards in the Voyage it happens she becomes leaky and crazy, and the super Cargo and Master by consent become Preighters of another Veffel for the fate delivery of the Goods; and then after her relading the second Vessel miscarries*, the Assurers are discharged: But if there be these words, The Goods laden to be transforted and delivered at such a place by the said Ship, or by any other Ship or Digest. Paulus, Vessel until they be safely landed, then the Ensurers must

answer the misfortune.

XII. If a man Ensures 5000 l. worth of Goods, and he hath but 2000 l. remitted, now he having enfured a real Adventure, by the Law Marine all the Affurers must antrod. Jur. Holl. fwer pro rata, if a loss. But by the opinion of some, only those first Subscribers who underwrit so much as the real the Custom of Adventure amounted to, are to be made liable, and the rest remitting their Premie 10 s. per Cent. deducted out of the same for their Subscriptions, are to be discharged.

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XIII. A Merchant Ensures his Goods from London to Locin. 1. 2. 6. 5. Sally, and there to be Landed; the Factor after arrival 5.9. And by having opportunity fells the Cargo aboard the fame Ship the Laws of Antwerp there without ever unlading her, and the Buyer agrees for the is a time allot-Freight of those Goods for the Port of Venice; before the ted after the breaks ground the Ship takes fire, the Affured and Buyer Ships arrival at are absolutely without remedy; for the property of the her Port how Goods becoming changed, and Freight being contracted venture is to de novo, the same was as much as if the Goods had been be born by the landed.

And so it is if the Factor after her arrival had contracted for Freight to another Port, and the Ship had happened to take fire, the Assurers are hereby absolutely dis-

charged for ever.

XIV. If a Ship be Enfured from London to blank being left by the Lader to prevent her furprize by fieur Gourdan the Enemy, in her Voyage she happens to be cast away, Governour of though there be private Instructions for her Port, yet 1585. the Enfured fit down by the loss by reason of the uncertainty. So a blank is left in the Policy for the value of the Ship or Lading, if a lofs, and there be not words that may supply, the Ensured may endanger the Policy.

XV. After notice of loss, the Enforced, (if he doth Locinius, lib.2. think fit) for that he bath Ensured the most of his Adven- cap. 5. 5. 8. ture, or that he would have the affiltance of the Affurers; when there is hope of recovery of the Adventure, he may then make a Renunciation of the Lading to the Affurers. then he comes in himself in the nature of an Ensurer, for fo much as shall appear he hath born the Adventure of beyond the value Enfured.

But if the Merchant shall not renounce, yet there is a power given in the Policy for him to travel, purfue and endeavour a recovery (if possible) of the Adventure after a misfortune to which the Assurers are to contribute, the same being but a trouble to give ease to the Assurers.

If prohibited Goods are laden aboard, and the Merchant enfures upon the general Policy, which always contains these words; Of the Seas, Men of War, Fire, Enemies, Virates, Rovers, Thieves, Fettezons, Letters of Mart, and Countermark, Arrests, Restrainments and Detainments of Kings and Princes, and all other persons, Barratry of the Master and Mariners, and of all other perils, losses and missortunes

long the Ad-Enfurers, weh is about 15 days. Art. 13. Affecur.

and Case of Mon-

what soever they be, and how soever they shall happen or come. to the hurt and detriment of the Goods and Merchandize, or any part or parcel thereof; whether if fuch Goods be law-Subnomint peri- fully seized as prohibited Goods, the Ensurers ought to cautio; compre- answer? It is conceived they ought not; and the diffehenditur omnis rence hath been taken, where Goods are lawful at the casus qui acci- time of Lading to be imported into that Country which dit in mari, a they are configned for; but by matter ex post facto after timpestate, ab ho-stibus, prædonibus, reprifaliis, feized, there the Assurers must answer, by virtue of the ut vocant arre- Clause, And all other perils, &c. But if the Goods were flis, allifq; mo- at the time of lading unlawful, and the Lader knew of dis usitatis ci- the same, such Assurance will not oblige the Assurers to tra fraudem, & answer the loss; for the same is not such an Assurance as culpam contrabentium aut do- the Law Supports, but is a fraudulent one.

mini mercium Fur. Holl. par. versandum est. citrog; obligationis postulat. cap. 5. 5. 8.

A Policy was made from Cadiz to the Vera Cruze in New vel navis. Gro- Spain upon monies lent upon Bottomry, and upon any tius de Introd. kind of Goods and Merchandize whatsoever loaden a-24. In boc con- board the good Ship called the Nonfira Seignora del Cartractu bona fide men and Mary Magdalen, the Adventure beginning immediately from the lading before a day to come, and the ut natura ultro monies from the time they were to be lent, and fo to continue from Cadiz to Vera Cruze, and after delivery, Locinius, lib. 2. with Proviso to stay at any Port or place in her Voyage, and likewise to touch at Porto Rico, and there to lade and unlade without any prejudice to the Enfurance, the Cargo being valued at 1700 l. fterl. without account, &c. against Seas, Men of War, Fires, Enemies, Pirates, Rovers, Thieves, Fettezons, Letters of Mart and Countermart, Surprizals at Sea, Arrests, Restraints and Detainments of all Kings, Princes, and People of what Nation, Condition, or Quality foever. The Ship being laden at Cadiz, did depart towards New Cruz, and before arrival there, touching at Porto Rico, the Goods were there seized and arrested in an in B. R. Judg. and pleaded, That the Ship at her arrival in her Voyage Action brought upon the Policy, the Defendant came in at the Port of Rico, was laden with Goods and Merchandize prohibited, and the same and also the Ship did there become forfeited by default of the Proprietors, and was there feized and taken. The Question was, if the Owners should ensure, and then order prohibited Goods to be laden, whether that an Arrest upon the same should entitle

Isaac Houbland versus Edmund Harrison. Hill. .II.

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title them to a Recovery. The fecond Objection was, If (as the Defendant had pleaded this Plea) the same were good? As to the first, the Court did all incline, that the Ensurance ought to be bona fide, i. e. the restraint ought to be of fuch Goods as by Law were not restrainable, but furely that cannot be; for the intention of Policies are to warrant the perils of all manner of Goods in all manner of cases. So that if there be a loading bona fide, be it prohibited or not, the same in case of loss ought to be answered, unless it were a fraudulent contrivance; but to the second it was resolved, That the Plea was infufficient for admitting the fame, should not oblige the Enfurer; yet because the Defendant did not shew that Like Judgment the Goods were laden either by the Ensured or by their was given a-Factor or order, otherwise the same should not conclude gainst Lethyleir them, for perhaps the Master or his Mariners, or a Stran- adf. Houbland, ger, might load them on board without order; fo that Trin. 32 Car.2. upon the meer infufficiency of the manner of pleading, 168. and not of the matter, the Court gave Judgment for the Plaintiff.

But if a Merchant will Freight out Wool, Leather +, † 12 car. 2. and the like, or fend out Goods in a Foreign bottom *, cap. 32. ard then make a Policy, the Ship happens afterwards to 74 Car. 2. cap. be taken, by reason of which there becomes a forfeiture * 12 car. 2. of Ship and Lading; the Enfurers are not made fubject cap. 18. to answer the damage: for the very foundation was illegal and fraudulent, and the Law supports only those Assurances that are made bona fide; for if otherwise, and men could be enfured against such actions, they would destroy Trade, which is directly to thwart the institution and true intentions of all Policies.

But if Goods should happen to be lawfully Ensured, and atterwards the Vessel becomes disabled, by reason of which they relade by consent of the Super Cargo or Merchant into Rittersh. ad leg. another Vessel; and that Vessel, after arrival, proves the contract. 23. de Ship of an Enemy, by reason of which the Ship becomes pag. 236, 237. fubject to seizure: yet in this case the Ensurers shall an- Stypman dicto fwer, for that this is fuch an accident as is within the in- loco, num. 335. tention of the Policy.

Several men lade aboard Salt, without distinction, not putting them in Sacks, and the like; the Ship arrives, the Master delivers to their Principals according to their

ob. te. l. 2. Si cert. peti.

Infl. in pr. quib. Bills of Lading as they come one by one, it falls out that mod.rer.contrab. fome of the Salt is washt or lost by reason of the dampness of the Ship, and that the two last men cannot receive their proportion. There are in this case these things to be confidered:

1. Whether the Master is bound to deliver the exact quantity?

2. Whether those that have received this loss can charge the Affurers?

3. Whether the Assurers can bring in the first men for a contribution, they having their Salt delivered to them compleatly.

Mill. 11 Fac.in C. B. Laftlow and Tomlinfons Cafe, Hobart fol. 88. Leg. quod convenit de verb.

mare.

Certainly the Master is not bound to deliver the exact quantity, nor is he obliged to redeliver the very specifical Salt, but only as men are to repay Money or Corn by the distinction in a Bag or Sack, and out of them; but if the fault was in not pumping, keeping dry his Deck, and the like, there è contra: though perhaps there may be special agreement.

Besides, this is a peril of the Sea which the Master could not prevent, and of necessity he must deliver to one first before another.

As to the fecond, It is no question but that the Assurers shall answer. But whether they shall bring in the first men for contribution, may be fome doubt.

It has been conceived by fome, that they ought not; D. Lig. in mo- for they delivered their Salt to the Master tanguam in Creditum, and was not to expect the redelivery of the fame specifical Salt: Besides, the Master must of necessity deliver to one man before another.

But by others it has been conceived they ought to contribute pro ratione; for as Goods of necessity some must be stowed in the Hold, and that such Goods seldom escape the peril of the Sea, so the rest must of necessity contribute to that misfortune, and fo make no distinction.

The Bills of Lading are very useful to settle the difference between the Affurer and Affured, of which there are three parts, one fent over Sea, the other left with the Master, and the last remaining with the Lader.

XVI. The Office of Assurance was erected by the Statute of 43 Eliz. cap. 12. which reciting, 'That whereas diffe-

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Book II.

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differences growing upon Policies of Assurances had been ordered by discreet Merchants approved by the Lord Mayor, who did speedily decide those Causes, until that of

c late years divers perfons did withdraw themselves from that Arbitrary course, and have sought to draw the par-

ties affured to feek their monies of every feveral Affurer by Suits Commenced in her Majesties Court to their great charges and delay: Whereupon it was Enacted.

great charges and delay: Whereupon it was Enacted,
That the Chancellor or Keeper for the time being should issue
forth a standing Commission (to be renewed yearly, or as
often as to him shall feem meet) for the hearing and deter-

mining of all fuch Causes arising on Policies of Assurance
 as shall be entred in the Office of Assurance in London.

The Judges or Commissioners appointed are the Judge of the Court of Admiralty, the Recorder of London, two Doctors of the Civil Law, two Common Lawyers, eight grave and discreet Merchants, or to any five of them; and that they or the greatest part of the Commissioners have power to Hear, Examine, Order, and Decree all such Causes in a brief and summary way without formality of pleading.

They have power to fummon the parties, examine Witnesses upon Oath, commit to prison upon refusal of obedience to their Decrees; they are to meet once a week at the Assurance Office, or some other convenient publick place, and no Fees at all are to be exacted by any person

whatfoever.

There lyes an Appeal from their Sentence to the Lord Chancellor or Lord Keeper (but the party must deposite the monies decreed, and then (though the party be imprisoned he may be discharged) and then it lyes in the Lord Chancellors or Keepers breast to affirm or reverse, and to award the party assured double costs.

No Commissioner being party Assurer can act by virtue of this Commission, nor until he hath taken his Corporal Oath before the Mayor and Court of Aldermen, To proceed uprightly and indifferently between party and

party.

XVII. This was a good Act, had it been as carefully penn'd as was intended; for there were many things which this Act did not extend to.

First, Any man may at this day make a private Policy notwith-

notwithstanding this Act, which is as good and effectual in Law to all intents and purposes, as one made and entred in the faid Office; and that fuch a Policy might and may be now fued at the Common Law.

Secondly, The number of Commissioners being fo great that there could be no Court without five at the least: and without a Court they neither could fummon parties or examine Witnesses, and that was very difficult to

Thirdly, If the Parties or Witnesses refused to appear, they had no power to punish the party for the delay, with costs or otherwise, which was very mischievous.

Fourthly, No Commissioner could sit before he was fworn: Commissions and the Commissioners being often renewed, it was a trouble to be attending a Court of Aldermen, which was difficult fometimes of the year to get.

Fifthly. Though they had power to commit the party who refused to obey their Decree, yet they had no power

to make any Order against the Ship.

Which matters being taken into confideration, it was Enacted *, That three Commissioners, whereof a Doctor of the Civil Law, and a Barrifter of five years standing to be one, should make a Court, and to act as any five before might have done.

They have likewife power now given them to fummon parties and Witnesses, and upon contempt or delay in the Witnesses upon the first summons and tender of reasonable charges: and in the parties upon the fecond fummons

to imprison offenders or give costs.

Every Commissioner is now to take his Oath before the Lord Mayor to proceed uprightly in the execution of the faid Commission; and any of them may administer an Oath fo as the adverse party may have notice, to the end

fuch person may be fairly examined.

Commissions may issue out of the Court of Admiralty for examining of Witnesses beyond Seas, or in remote places by directions of the Commissioners, and Decrees may be made against Body and Goods, and against Executors and Administrators, and Execution accordingly; and affess Costs of Suit as to them shall feem just.

But Execution cannot be against Body and Goods for

F IA Car. 2. tap. 23.

the same debt, but the party must make his Election as at the Common Law.

XVIII. But these Statutes took not away that Cognizance which the Courts at Westminster claimed upon such Contracts by the Comman Law; but only gave this new shal, Styles Rep. erected Court a concurrent Jurisdiction with those at the 1654. Common Law: for though the loss happened out of the Realm, yet they had Jurisdiction of the Cause. And Dowdales Case. therefore if an Action is brought upon a Policy of Affu. coke lib. 6. fol. rance, though the loss happened at Sea, yet the Jury shall 47. 36 Eliz, in inquire; for the loss is not the direct ground of the Action, but the Assumpsit.

The Admiralty have likewise put in, if not for an ab- 38 H. 8. Crane folute Jurisdiction, yet at least a concurrent one; yet and Beil. coke both have been denied them, notwithstanding that the 4. Inflit. fol. Judge of the Admiralty is Judge of the Court of Affu. 138, 139.

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for the XIX. By the making of an Office-Policy according to

the Statute, these advantages will follow.

1. If the Policy be loft, if the same be entred with the Register of the Office, the Entry is effectual to answer the matter both at the Common Law, as well as in the fame Court : but a private Policy lost is like a Deed burnt. unless that there be very strong evidence, as a Copy, and the like, it will be of little value. So that then there will remain nothing but an equitable relief in Chancery, for the fatisfaction of the party.

2. If a man Freights out a Ship from London to Cales, and affures here, he may write to his Correspondent to make an Assurance there of the same; if the matter comes before Commissioners, they may examine the Ensured upon Oath, and determine therein according to Law and the Custom of Merchants: But at the Common Law the fame cannot be, but relief must be had in that point ac-

cording to Equity in Chancery.

3. The fame is a Court of Equity as well as a Court of Law; fo likewise a Court to adjudge according to the Custom of Merchants.

4. They may decree against twenty Assurers at one

time, but at Law they must be fued distinctly.

5. They may proceed out of Term as well as in Term, and (if the matter will bear it) they may finish a Cause in a fortnights time, and lefs. 6. The

DI Policies of Adurance.

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6. The Judgments there given are generally upon mature deliberation, and by persons well skilled in Marine affairs; and if their Sentence is thought to be unreasonable, the Lord Chancellor or Lord Keeper may on Appeal determine the same.

7. The Parliament hath had so special a regard to the Judgments given in this Court, that no Appeal from thence can lye till the whole monies decreed are deposited, and the full costs paid to the Appellee; which is more expeditious and advantageous than having of Bail at the Common Law; for in such a case, after the Plaintiff hath spent his monies, and been delayed three or four Terms, and with much difficulty and charge got Judgment, the Defendant or his Bail may render him to prison in discharge of themselves. So that although this Court cannot compel the Defendant to put in Bail, yet the Sentence there being so swift from which there is no Appeal till the monies are paid down, the same seems to be of great convenience to the Assurers as well as Assured.

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CHAP. VIII.

Df Prilage and Butlerage.

1. What Prisage is , and where taken, and of what.

Merchant Strangers exempted from the same.

III. When due, and the exemption of the citizens of London from the

IV. What Citizens are capable, and

V. A Foreigner imports and makes a Citizen Executor and dyes; whether he (hall have the benefit of the Immunity.

VI. Where a Foreigner fells to a Citizen before, but he broken, the Vendee shall be chargeable.

VII. Where a Grant to discharge a particular Ship shall be good; and where a Grant to particular per-Sons shall be otherwise.

VIII. Of Butlerage, what, and who, are exempted.

IX. Where the King becomes entituled to those duties.

X. A Grant to be free of all customs, Impositions, &c. extends not to Prifage and Butlerage.

XI. Cinque-Ports exempted from Prilage.

I. Rifage is a certain taking or purveyance for Wine to the Kings use; the same is an ancient Duty which the Kings of England have time out of mind had and received; the manner hath been by taking of every Ship or Vessel that should come into this Realm, if ten Tun, to have for Prifage one Tun: and if it contain 20 Tun or more, to have two Tun (viz) unum ante dolium, and the other deorsum, paying 20 s. for each Tun. This ancient Immunity they have enjoyed as a Flower of the Crown, Dyer 92. 42. and by fome has been conceived not grantable away with- Fleta, 1.2. c. 210 out Act of Parliament. But yet in 6 E. 3. fol. 3. Case 15. mentions the same to be grantable over.

11. King Edward the First having laid some Impositions on the Merchants, which in Anno 25. of his Reign, being taken away with promise, that neither he nor his Succeffors should do any such thing without Assent of Parliament. In the one and thirtieth of his Reign they granted him an increase of Customs; in lieu of which he granted Rot. Parl. 31 E.

them many Immunities, as Release of Prisage, &c.

III. Prifage is not due till the unlading, or that which is commonly called breaking of Bulk; for the words are,

Trin. 5 74c. in and Boggen's Cafe.

De qualibet navi important vina, & disonerant inde. King B. R. Kennycot Edward the Third by his Charter dated 6. Martin Anno Regni primi, granted his Royal Charter of discharge to the Mayor, Commonalty, and Citizens of London, in hac verba, (viz.) Quod de vinis Civium nulla prisa fiat, sed perpetue inde effent quieti, &c. which was afterwards allowed in the Exchequer.

IV. It is not every Citizen that is capable of this Priviledge, but only those that are resident within the City: And foit was Rul'd in the Cafe of one Knowls, who being a Citizen and free Grocer of London, removed his Houfhold cum pannis, and did dwell at Briftol, but yet kept his Shop in London; and a Ship of his arriving with Wines at London, and being unladen, the Prifage was demanded; 4 H.S. Knowles he claimed the benefit of discharge. It was adjudged, he was not capable of the same: for he that will claim the benefit of this discharge, ought to be Civis incola commorans.

Cafe.

Hill.43 Eliz.in

B.R.Rot. Attor-

ney General

riland Sneed.

By 24 H. 6. (a private Act of Parliament) Complaint was made, That the Lord Mayor of London would make Strangers Citizens; it was there declared, That this benefit to be discharged from payment of Prisage, did not extend to fuch Citizens as were dotati, made free, but versus Sacheve- unto those Citizens only which are commor ant, incolant, and resident into the City.

Waller versus Hanger, Bulfired. 3. part, fol. I.

V. If a Foreigner brings a Ship laden with Wines into the Port of London, and then makes a Citizen his Executor and dyes, he shall not have the benefit of this Immunity from payment of Prilage for these Wines, for that they are not bona Civium.

VI. If a Foreigner arrives with a Ship laden with Wines at a Port with an intent to unlade, and before the Goods are entred, or Bulk is broken, he fells them to a Citizen, Prifage shall be paid notwithstanding, for it was never the Kings Grant to discharge a Citizen in such a manner.

VII. If the King does discharge such a Ship of 7. S. being at Sea, particularly naming the same, from the payment of Prifage, and he dyes before the Ship arrives, no Duty can be demanded.

Hanger's Cafe, Hill. 13 Fac.

But it has been held, If a particular person has a Grant to him to be discharged of his Goods, and he dyes before the arrival, the Duty shall be paid.

A

Quo Warranto's were brought against three Archbishops Bro. tit. difof York, to shew cause why they demanded to have Prifage claimer, fol.47 for Wines brought into the Port of Hull: The two first pleaded to have only the first take, and a pre-emption & Ed.3.fol.5,6. after Prisage paid; but the third pleaded a Charter of Archbishop of 15 E. 2. by force of which he claimed the same, and York's Case. Rul'd not good. For though the Charter might be good, yet it was held in that case, a disclaimer by the Predecessor Sir John David should bind the Successor. Note, at this day the Duke of in the case of Ormend in Ireland hath an Inheritance in the Prifage of Customs. Wines by the Kings Charter.

VIII. Butlerage is a Cultom due from Merchant-Strangers of 2s. upon every Tun of Wine brought into this

Realm by them; but English men pay it not.

King John granted to the Merchants of Aquitain Trading for Wines thence into England divers Liberties, amongit others, Libertatibus concessis Mercatoribus vinetariis In libro Rubio de Ducatu Aquitania reddendo Regi & haredibus suis 2 s. de in Scaccario quolibet dolio vini ducti per eosdem infra Regnum Anglia vel Remem.fol.265: potestatem Regis.

All Merchants Strangers in confideration of the Grant Rot. Chartarum; to them by the King of divers Liberties and Freedoms, num. 44 called Concesserunt de quolibet dolio vini quod adducent vel adduci fa- charta Macacerent infra Regnum, &c. solvent nobis & haredibus nostris toria.

nomine Custuma duos solidos, &c.

It is called Butlerage, because the Kings chief Butler at large in the doth receive it. And the double value of these Duties floms. is made penal, if any person customs Goods in another mans name whereby to defraud the King of Prifage and Stat. 1 H. 36

Butlerage.

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· IX. Breaking of Bulk is that which entitles the King to the Duty: for if a Merchant imports Wines to the number of 20 Tuns, yet if he unlades but part, as nine or four Tuns, yet the King shall have the entire Prisage; and though the Custom seems to declare, that the taking must be as well before as after the Mast, yet is not the Officer Kenicot versus tyed to that strictness, but may take where he pleases; Hoggan, Yelverfor two Tuns are the Kings due: for otherwise he might Boston's Case, be cozened, the Freighter perhaps lading other Commo 3 Rep. 44. 100 dities aboard after the Mast.

If there be but one Tun taken out, yet the Duty must be paid: The reason is, for that otherwise the Officer Ee 2

See the Charrer Chapter of Cu-

2 Ed. 6. 226

dom.

268

vies Reports.

should be quit, de omnibus Custumis, Subsidiis, & Impositionibus, & omnibus aliis denariorum summis debitis & solubilibus pro quibuscung, Merchandizis importandis; and that Vouched in the he should be as free as the Citizens of London. In that case of Customs case it was adjudged in the Exchequer, That by that Grant in Sir John Da- the King did not discharge him of Prisage, because the Prisage was not specially expressed in the Grant, although that the City of London were by a special Charter freed of

X. The King granted to a Venetian Merchant that he

Prisage. XI. The Cinque-Ports are likewise discharged of Pri-Cl. I E. I. M.S. fage; yet if a Citizen of Salisbury should consign Wines to be delivered and unladed at Dover, the bare discharge Bulftrod. 3.part, of the Goods at that Port will not acquit the Importer from the Duty; for it is not the parties importation, but fol. I.

> his domicil that qualifies him for the benefit of this Immunity.

> > CHAP.

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CHAP. IX.

DI Pilots, Wharfage, Primage, Aberidge, Loadmanage.

1. Of the Pilots charge till the Ship is brought to her place or bed.

II. If the Ship is likely to miscarry, what the Ships Crew may do at

III. Of ignorant Pilots their punishment, and if the Ship miscarries, who shall answer.

IV. Of Wharfage, and where the

Wharfinger (hall answer, and where

V. Primage and Petilodmanage where due, and for what; and if the Ropes break, whether the Mafter, or wharfinger shall answer.

VI. Petty Averidge where due, and for what, and Hat-money.

VII. Loadmanage where due, and for what.

I. DY the Laws of Oleron after that the Pilot hath brought the Ship to fure Harbour, he is no further bound or liable; for then the Master is to see her bed and to her lying, and bear all the rest of her Burthen, charge, and danger, except that of the act of God: So that before she comes to her place or bed, and while she is under the Pilot's charge, if the or her Goods perish, or be spoiled, the Pilot must make good the same.

II. By the Laws of Oleron, if his fault is notoriously gross Leg. Oleron, that the Ships Crew fees an apparent Wreck, they may cap. 23. then lead him to the Hatches, and strike off his head; but the Laws of England allow no fuch halty execution.

By the Laws of Denmark an ignorant Pilot is to pals

thrice under the Ships Keel.

The Master generally in the Charterparty covenants to find a Pilot, and the Merchant covenants to pay him

his Pilotage.

III. But if a Ship should miscarry coming up the River under the charge of the Pilot, it has been a Question, Whether the Master should answer in case of the insufficiency of the Pilot; or whether the Merchant may have his remedy against both? It hath been conceived the Merchant hath his Election to charge either; and if the Master, then he must lick himself whole of the Pilot.

Ee 3

IV. Whar-

27 H.S. cap.26.

IV. Wharfage is money paid for landing Wines at a 22 Car. 2. C. 11. Wharfe, or for shipping or taking in Goods into a Boat or Barge, they commonly keep Boats or Lighters of their own for the carrying out and bringing in of Goods, in which if a lofs or detriment happens, they may in some cases be made liable.

> An Action of the Case grounded on the Custom of the Realm was brought against the Defendant Master of a Wharfe, for not fafe delivering of Goods, &c. The Cafe appeared to be thus: The Master unladed a Bale of Silk into the Wharfingers Lighter, and fent part of his Mariners to convey it ashore; it happened that the Goods were stole : The Question was , Whether the Wharfinger or the Master should answer? Upon a Tryal at Guild-Hall before my Lord Chief Justice Hales, it was there Rul'd, That the Master was liable, and not the Wharfinger; for till they are landed, the Master hath them under his power: but if Goods are to be fent aboard, there if they miscarry in their passage, the Wharfinger must answer.

> V. Primage and Petilodmanage is likewise due to the Master and Mariners for the use of his Cables and Ropes to discharge the Goods, and to the Mariners for loading and unloading of the Ship or Vessel, it is commonly about

twelve pence per Tun.

If the Ropes break in hoisting of Goods out of the Ship into the Lighter or Boat, the Master must answer if the Goods be damnified or loft.

But if the Ropes break at the Crane in taking them out of the Lighter, (although till they are landed, they are not out of the Masters custody) yet the Wharfinger shall answer.

VI. Petty Averidge is another little small Duty which Merchants pay to the Master when they only take Tunnage over and above the Freight, the which is a small rened in the Bills, compence or gratuity for the Masters care over the Lais that which is ding; and in the Bills of Lading they are exprest after Freight, together with Primage and Averidge accusto-

> The French Ships commonly term the Gratuity Hatmoney, and our English Merchants pay it our Masters over the Freight, it is sometimes more, sometimes less; two or three Pieces. VII. Loads-

Randallverfus Hilton & Butler, Pasch. 26 Car 77 B. R.

32 H.S. C. 14.

Leg. Oleron, Cap. 10.

Cok. Entries, fol. 2.

Some conceive that the Averidge mentiothe Averidge or Contribution for losses.

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ver vo VII. Loadsman, is he that undertakes to bring a Ship fafe through the Haven to the Key or place of difcharge, Roughton, Arand if through his ignorance, negligence or other fault he tic. Enquiry, fuffereth the Ship or Merchandize to perish, an Action fol. 27, 28. Iyes against him at the Common Law; and so by some conceived he may be punished in the Admiralty, but not in both.

The Hire is called *Loadmanage*, the which the Pilot receives of the Master for conducting the Ship up the River, or into the Port to her convenient bed.

If two Ships lye in an Harbour, and the Anchor of one is feared may occasion damage to the other, if after request and resultance and there be probable cause) the other may take up the Anchor, and let the same down at a further distance, and the same, if opposed or hindred, and any damage happens, they are to make full satisfaction; so it is if Per Leg. Oleron. they lay out an Anchor, and neglect the placing of a Buoy cap. 15. to the Anchor, and damage happen thereby, they are not only subject to be punished in the Admiralty, but likewise to render satisfaction to the party damnified.

If two Ships be in the River, and the one falls foul on the other both being laden, by the Law Marine the Contribution is to be in Common, and to be equally divided and apprifed half by half; but then the Mariners must per Lig. Olerantiwear there was no fault in them: for otherwise one that cap. 14. hath an old rotten Vessel which he can no ways dispose of, may so order the matter as to lay her in the way of a good Ship under Sail, so that the same may be answered in damage: but when the Contribution is made equal, then the contrivance will be avoided; but at the Common Law there can be no such Judgment, for one of them must be found guilty; and if so, he must answer the others damage, and for his own he may sit down by the loss.

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CHAP. X.

Df Bills of Erchange.

I. (I the Antiquity of Exchange by | XVII. Protest, what is meant by the the Hebrew Law.

II. Of the Antiquity of Exchange by the Romans.

III. Of Exchanges by other Nations in imitation of those people.

IV. Of the several forts of Exchanges, and of Cambio commune.

V. Of Cambio real, or Exchanges value for value.

VI. of Cambio ficco, or dry Exchanges.

VII. of Cambio fictitio, or feigned Exchange.

VIII. Of the Exchanges used this day, and on what.

IX. How Exchanges are made, and upon Monies in London.

X. Monies paid generally, how repaid by Exchange.

XI. Of Bills of Exchange payable at fingle ufance.

XII. Bills of Exchange at double or treble usance, and of the customary usances to certain places from London and Amsterdam to other pla-

XIII. Of the nature of Bills of Exchange, and how esteemed of by the Laws of England.

XIV. Bills drawn more than one, no prejudice to the parties; and of the true measure of judging on Bills by Custom.

XV. What amounts to an acceptance generally, and on refusal where to be protested.

XVI. All the drawers are made liable; and whether the party to probom the Money is made payable, is bound to procure an acceptance.

Same ; and where the Same is neceffary, and where not.

XVIII. Bill drawn on two persons. where the same is necessary, and where not.

XIX. One Factor ferves a Company, where a Bill accepted of his by one of the Company obliges the reft, and where not.

XX. What words amount to an acceptance, and what not.

XXI. Where a Bill may be accepted for part, and what must be done with the Bill thereupon.

XXII. When a Countermand may legally be made, and when not.

XXIII. How the several parties intereffed in a Bill of Exchange are obliged and fettered to each other.

XXIV. How a Collateral Security may be annexed to a Bill when the time is elapsed for non-payment.

XXV. where the Protest is only neceffary to be kept, and where that and the Bill must both be remit-

XXVI. Bill lost, what is necessary for the parties intereffed in such case to act.

XXVII. Of blank Endorsements, the validity of the same.

XXVIII. A Bill once-accepted, whether the same may be revoked; and whether it may be accepted to be paid at a longer time than is mentioned: and what Protests are then necessary to be made.

XXIX. Of Bills accepted for the honoter of the drawer, where the fame Shall oblige.

XXX. The

XXX. The time customary allowed for payment after failure of payment at the day.

XXXI. Of the validity of speedy Protests in relation to recover the money to be paid on the Drawer.

XXXII. Bill accepted, and before the day of payment the Acceptor is a failing, what's necessary to be done in reference to the obtaining better fecurity.

XXXIII. Bills accepted for the honour of the Drawer, where turned into an act, and remitted by him that gives bonour to the Bill. XXXIV. The Acceptor ready to pay, but the party to whom made payable is dead, what is necessary.

XXXV. Causes general for a Protest, and where satisfaction to the deliverer discharges all parties.

XXXVI. Of Exchange by way of

XXXVII. One pays a Bill before it be due, and the party to whom the same was paid, fails, where he shall be answerable to the Drawer not with flanding.

XXXVIII. Of Bills assignable over according to the Customs of Merchants, what operation in Eng-

HE Exchange for Monies is of great Antiquity as well by observation of the Hebrew Customs, as those of the Romans.

Upon the first of the month Adar, Proclamation was made throughout all Ifrael, That the people should provide their half Sheckles which were yearly paid towards the Service of the Temple according to the Commandment of God; on the 25th of Adar then they brought Tables Exod. 30. 31. into the Temple, (that is, into the outward Court where the people stood) on these Tables lay the lesser Coyns which were to furnish those who wanted half Sheckles for their Offerings, or that wanted leffer pieces of money in their payment for Oxen, Sheep, Doves, and the like, which Moles Kotfenfes flood there in a readiness in the same Court to be sold for nice, An. 1557. Sacrifices; but this supply and furnishing the people from de Siclis, fol. those Tables was not without an Exchange for other mo. 122. Col. 2. ney, or other things in lieu of money, and that upon advantage: Hence all'those that sate at the Tables were called chief Bankers, or Masters of the Exchange.

II. By the Romans it is supposed to be in use upwards of 2000 years, monies being then elected out of the best of Metals to avoid the tedious carriage of Merchandize from one Country to another: So other Nations imitating the Jews and Romans, erected Mints, and coyned monies, upon Alex. Gen.dier. which the Exchange by Bills was devised, not only to avoid lib. 5. cap. 30. the danger and adventure, but also its troublesom and

tedious carriage.

III. Thus Kingdoms and Countries having by their Soveraign

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veraign authorities coyned monies, caused them to appoint a certain Exchange for permutation of the various Coyns of several Countries, without any transportation of the Coyn, but giving par pro pari, or value for value, with a certain allowance to be made those Exchangers for accommodating the Merchants.

IV. As Commerce became various, fo Exchange numerous; but generally reduced to four, Cambio commune,

Cambio real, Cambio sicce, and Cambio sittitio.

Reg. Orig. 194. Statut. 5 R. 2. cap. 2. 3 H. 7. 6.

Cambio commune in England was those that were constituted by the several Kings, who having received monies in England, would remit by Exchange the like summ to be paid in another Kingdom. Edward the Third, to ascertain the Exchange, caused Tables to be set up in most of the general Marts or Ports of England, declaring the values of all or most of the Foreign Coyns of those Countries where his Subjects held Correspondence or Commerce, and what allowances were to be made for having monies to be remitted to such Countries or Kingdoms.

18 E. 3. Acton Burnel. V. Cambio real, was when monies were paid to the Exchanger, and Bills were drawn, without naming the species, but according to the value of the several Coyns, which two Offices afterwards were incorporated, and indeed was no more but upon payment of monies here in England to be repaid the just value in money in another Country, according to the price agreed upon between the Officer and deliverer to allow or pay for the exchange of

the money and the loss of time.

VI. Cambio ficce, or dry Exchange, is when a Merchant hath occasion for 500 l. for a certain time, and would willingly pay interest for the same; the Banker being desirous to take more than the Statute gives, and yet would avoid the same, offers the 500 l. by Exchange for Cales, whereunto the Merchant agrees; but the Merchant having no correspondence there, the Banker desires him to draw his Bill, to be paid at double or treble usance, at Cales, by Robin Hood, or John-a-Noakes (any seigned person) at the price the Exchange is then currant; accordingly the Merchant makes the Bill, and then the Banker pays the monies; which Bill the Banker remits to some Friend of his to get a Protest from Cales for non-acceptance, with the Exchange of the money from Cales to London,

This Usury was first introduced by the Jews here in England.
Vid. Co. 2. Inst. fol. 506.

all which with costs, the Merchant is to repay to the Banker; fometimes they are fo consciencious as not to make

above 30 per (emt.

VII. Cambio fictitio, when a Merchant hath occasion for Goods to Freight out his Ship, but cannot well spare money; the Owner of the Goods tells him he must have ready money; the buyer knowing his drift, it is agreed, That the feller shall take up the monies by exchange for Venice, or any other parts; but then the Merchant must pay for exchange and re-exchange.

So likewise where the Merchant is become indebted to the Banker, they are contented to stay, the Merchant paying exchange and re-exchange; the which he will most

certainly compel him to do.

These two last ways of grinding the face of the gene- 3 & 4 H. 71 rous Merchant, was afterwards prohibited, but notwithflanding it was found impossible to moderate the inequality of Exchanges, and to have value for value: fo that at this day it feems to be a Cold, that many an honest man

is apt to catch.

VIII. The just and true Exchange for Monies that is at this day used in England (by Bills) is par pro pari, according to value for value; so as the English Exchange, being grounded on the weight and finenels of our own monies, and the weight and fineness of the monies of each other Country, according to their feveral Standards proportionable in their valuation, which being truly and justly made, ascertains and reduces the price of Exchange to a fumm certain for the exchange of monies to any Nation or Country what foever: As for instance,

If one receives 100 l. in London to pay 100 l. in Exeter;

this by the par.

But if a Merchant receives 100 l. in London to pay 100 l. at Paris, there the party is to examine and compare the English weight with the weight of France, the finenels of the English Sterling Standard with the fineness of the French Standard; if that at Paris and that at London differ not in proportion, then the exchange may run at one price, taking the denomination according to the valuation of the monies of each Country; but if they differ, the price accordingly rifes or falls: and the fame is easily known, by knowing and examining the real fineness of a French 5 s. Piece,

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Piece, and an English 5 s. Piece, and the difference which is to be allowed for the want of fineness or weight, which is the exchange, and fo proportionably for any fumms or monies of any other Country, the which is called Par, or giving value for value.

* And therefore fome are there can be no certain rate

But this Course of Exchange * is of later years abused, and now monies are made a meer Merchandize, and does of opinion, that over-rule Commodities, and monies rife and fall in price according to the plenty and scarcity of money.

fet on the Par in Exchange, to answer justly the value of the Coyns of Foreign parts. by reason of the diversity of them, and of their intrinsick values. Vide Sir Robert Cottons Posthuma, fol. 306.

> IX. As money is the common measure of things between man and man within the Realm, fo is exchange between Merchant and Merchant within and without the Realm; the which is properly made by Bills when money is delivered simply here in England, and Bills received for the repayment of the same in some other Country either within the Realm or without the Realm, at a price certain, and agreed upon between the Merchant and the Deliverer. For there is not at this day any peculiar or proper money to be found in Specie whereupon Outland Exchanges can be grounded; therefore all Foreign Coyns are called imaginary.

Cro. 2. fol. 7. Martin versus Bour. Pasch. I fac. in B. R.

At Lindon all Exchanges are made upon the pound fterling of 20s. and 12d. to the shilling, for Germany, Low-Countries, and other places of Traffick; and for France upon the French Crown: for Italy, Spain, and some other places, upon the Ducat: For Florence, Venice, and other places in the Streights, commonly by the Dollar and Flo-

X. Bills drawn to be paid, are either at fight, or a time certain, fingle, double or treble usance, and are commonly about three, for fear of any miscarriage.

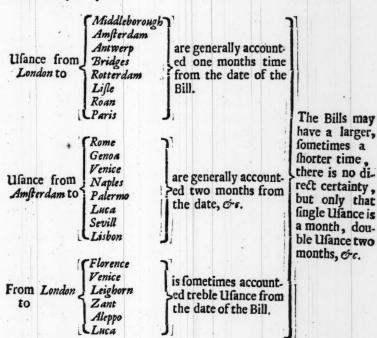
The taking and delivering money at fight binds the taker up to give his Bill to pay at fight, or within some short time the like summ after such a rate the Pound, Dollar, Ducat or Crown, as is agreed between them in Foreign Coyn, either according to the valuation of monies, or current monies for Merchandize.

XI. The fecond time of payment is called Usance, it is known known or taken to be the compass of one month, to be computed from the date of the Bill, and that governed according to the custom of the place where those Exchanges do run.

XII. The third is double or treble Usance two or three months; fometimes there are Exchanges made upon half

Usance.

The times of payment do alter the price of Exchanges according to time, commonly after 12, 15, or 20 in the Hundred by the year.



XIII. Excambium vel Cambium, or as the Civilians term, Permutatio; Billa Excambii fignifies no more but a customary Bill, folemnized by a numerous consent of Traders, to have a respect more than other Bills, though of as high and as intrinsecal a value: And those that give such Bills are called Exchangers or Bankers.

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Reg. Orig. fol. 194. Statut. 5 R. 2. cap. 2.

Though the Act was no more but to keep up the life of Commerce, (without which it is impossible for any Nation to flourish) yet could not any person draw such bills. or return money beyond Seas, without Licence first obtained of the King. But at this day any man may do it without being obliged to obtain fuch leave.

XIV. Such a Bill being drawn, they commonly take one or two more of the same date word for word, only this Clause is inserted in the second, My first of the same date, persons and summ not being paid: And in the third. My first and second of the same date, and contents not being

paid.

Consuetudo quandocung; pro lege fervatur, partibus ubi fuerit more utentium approbata; longavi enim temporis usus & consuetudinis . non est vilis autheritas, lib. I. cap. 3.

The right measure of judging on Bills of Exchange, is purely by the laudable Custom often reiterated over and over, by which means the same hath obtained the force of faith Bracton, in a Law, and not the bare and fingle opinion of fome halffledg'd Merchants: For Bills of Exchange are things of great moment as to Commerce, and are neither to be strained so high, as that a man should not cast his eye on them but the same shall be taken to be an acceptance: nor on the other hand having duly accepted them, the fame should be rashly and unadvisedly avoided, by the shallow fancy of fuch nimble pated shufflers; but they are soberly judged and governed, as the fame hath generally been approved of and adjudged of in former Ages.

> XV. A Bill being remitted, the party is to go imme. diately to the person to whom the same is directed, and present the same in order to his acceptance; if it be tendred, and the party subscribes Accepted; or, Accepted by me A. B. or being in the Exchange fays, I accept the Bill, and will pay it according to the Contents; this amounts with-

out all controversie to an Acceptance.

But if the same be refused, the party must then procure Words are made to figni- a Protest, and remit the same to the Deliverer, who is to fie things; by refort to the Drawer for satisfaction for the principal costs the word Deli- and damage. verer is meant

he that pays the money beyond Sea. By the word Drawer, he that writes or draws the

Bill of Exchange; the person upon whom, is called the Acceptor.

XVI. If there be feveral Drawers who subscribe, all are liable in case of a Protest.

If a Bill is drawn upon a Merchant in London payable

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le to to J. S. at double Usance, J. S. is not bound in strictness Noris any such of Law to procure an acceptance, but only tender the bill thing as a three when the money is due: but Merchants, who generally days respite to have generous spirits, will not surprize a man, but will acceptance. first procure an acceptance, or at least leave the bill for the party to consider and give his answer, and then give advice of the same, and if the money be not paid, then proteit.

XVII. A Protest is no more but to subject the Drawer to answer in case of non-acceptance or non-payment; nor does the fame discharge the party Acceptor, if once accepted; for the Deliverer hath now two remedies, one against the Drawer, and the other against the Acceptor.

To entitle the party to an Action at Law in England against the Acceptor, it matters not whether there be a Protest; but to entitle the party to a recovery against the Drawer beyond the Seas or elsewhere, there must be a Protest before a Publick Notary.

XVIII. A Bill drawn on two joyntly must have a joynt Per Jasonem in acceptance, otherwise it must be protested; but to two lege allegantur

or either of them, è contra.

Then if the same be accepted by one, it is purfuant to nibus indebition the tenour of the bill, and ought not to be protested but in case of non-payment; and in that case the person acceptor is liable to an Action: but if it be on joynt Traders, an acceptance by one will conclude and bind the other.

XIX. A Factor of the Hamborough, Turkey, or India Company draws a bill on the same, and a member accepts the same, this perhaps may make him liable, but not

another member.

So it is if ten Merchants shall imploy a Factor at the Canaries, and the Factor draws a bill on them all, and one of them accepts the bill, and then refules payment; this will not oblige the rest.

But if there be three joynt Traders for the common Mich. 19 Jac. stock and benefit of all three, and their Factor draws a C. B. Vanhiath bill on them; the acceptance of the one will oblige the versus Turner, winch. 24, 25.

relidue of the Company.

XX. A imall matter amounts to an acceptance, to that there be right understanding between both parties: As, Leave your Bill with me and I will accept it; Or, Gall for it

be allowed for

ff. de conditio-

to morrow, and it shall be accepted; that does oblige as effectually by the Custom of Merchants, and according to Law, as if the party had actually subscribed or signed it,

(which is usually done.)

But if a man shall fay, Leave your Bill with me, I will look over my Accounts and Books between the drawer and I, and call to morrow, and accordingly the Bill shall be accepted; this shall not amount to a compleat acceptance: for this mention of his Book and Accounts was really intended to fee if there were effects in his hands to answer, without which perhaps he would not accept, of the same. And fo it was Rul'd by Lord Chief Justice Hales at Guild Hall.

Trin. 20 Car. 2. in B. R.

of part of the Monies upon the Bill, does en the Bill.

A Bill may be accepted for part, for that the party upon The receiving whom the same was drawn, had no more effects in his hands; which being usually done, there must be a Protest, if not for the whole fumm, yet at least for the residue: no ways weak- however, after payment of such part there must be a Protest for the remainder.

Per leg. publica

G per Baft. ibidem, & per Romanum fingulari, fol. 474.

XXII. Any time before the money becomes due, the in fi ff. depositi Drawer may countermand the payment, although the bill hath been accepted.

The Countermand is usually made before a Notary; but if it comes without, so it comes under the parties hand,

it is well enough.

If the Bill be accepted, and the party defires to have the money before it be due, and it is paid, and then there comes a countermand; it hath been conceived, that he ought not to be allowed; for as he could not enlarge the time, so he could not shorten it, but his duty is to follow his Order.

XXIII. Note, The Drawer is bound to the Deliverer, and the Acceptor to the party to whom the bill is made payable; yet both are not bound to one man, unless the Deliverer be a fervant to the party to whom the money is made payable; or the party to whom the money is made payable be fervant to the Deliverer: yet both Taker and Accepter are liable till the bill is paid.

XXIV. Therefore when you bring your Action, be fure to draw your Declaration accordingly, and make the same part of the Custom as you set it forth; for if you not If Dra proc of v I her the c of E

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vary, you must expect to be nonsuited: and the party is Styles, Pages. Anno 1654.in not bound to alledge a particular place of demand. B. R. fol. 370;

If a Bill be returned, protested for want of payment, the Drawer is to repay the money and damage, or elfe he may procure a feculity, which is no more but another person of value subscribes the bill, in these and the like words, I here underwritten do bind my self as Principal, according to the custom of Merchants, for the summ mentioned in the Bill of Exchange whereupon this Protest is made, Dated, &c.

Now the Drawer, by virtue of this supplemental agreement, hath as much time again to pay the monies as there was given him in the bill when it was first drawn; fo that if the money be not then paid, together with the Rechange and Charges of the party, the party may recover the same

on the Principal or Security.

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XXV. Beyond the Seas the Protest * under the Notary's * That is for hand is sufficient in shew in Court without producing the not payment, very bill it felf. But if a bill in England be accepted, and the Bill being a special Action grounded on the Custom be brought a once accepted gainst the Acceptor, at the Tryal the party Plaintiff must produce the bill accepted, and not the Protest; otherwise he will fail in his Action at that time.

Therefore it is safe that a Bill once accepted be kept. and only a Protest for non-payment be remitted; but a

bill protested for not acceptance must be remitted.

XXVI. If a Bill is left with a Merchant to accept, and he loses the bill, (or at least it is so missaid, that it cannot be found) the party shall request the Merchant to give him Note for the payment according to the time limited in the Bill of Exchange; otherwise there must be two Protests, one for not acceptance, the other for non payment; but if a Note is given for payment, and there happens to be a failure, yet in that case there must be Protest for non-payment.

XXVII. A Bill is remitted to J. S. who owes monies to J. D. J. S. delivers the bill to J. D. and on the back-fide fubscribes his name; if J. D. receives the monies, he may fill up the blank as if the monies had been actually paid to J. S.: This is practifed amongst Merchants, and by them by the opinion reputed firm and good. But certainly the Common Law looks of my Lord upon this filling up of blanks after a man hath once figned Hales, Hill. 28 or fealed, to be no better than a harmless forgery; but if car. B. R. at there be either a general or special authority to the pur- Guild-hall. pole, it may then alter the Law. Note:

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Note, No person, be it Wife or Servant, can accept of a Bill of Exchange to bind the Master without a lawful authority, as a Letter of Attorney, and the like, which must be under-hand, unless that it has been formerly and usually done by the Wife or Servant in such case, when the Master hath been out of Town, who hath approved of the fame and answered payment: it must be usually Styles Reports. done; but one Partner may for another.

in B.R. fol. 370

Monck versus

Clayton Milit.

Mich. 22 Car. 2.

and Morris.

37 B. R.

A Servant of Sir Robert Clayton and Mr. Alderman Morris, (but at that time actually gone from them) took up 200 Guineys of Mr. Monck a Goldsmith, without any authority of his Masters; (but Monck, did not know that he was gone) the monies not being paid, Monck brought an Action against Sir Robert Clayton and Morris, and at Guild-Hall it was Rul'd per Keeling Chief Justice, That they should answer; and there was a Verdict for the Plaintiff. And though there were great endeavours to obtain a new Tryal, yet it was denied, the Court at Westminster being fully fatisfied that they ought to answer: for this Servant had used often to receive and pay monies for them; and thereupon they actually paid the monies.

Note, That which will oblige the Master, will be the And though the same seems authority and liberty which he usually gives the Servant; an act of wif- therefore fuch a power devolved, ought to be fecured by dom for Mer- the prudentest way that may be; which is generally done

chants and o-thers so to take, by Bonds and Obligations.

yet it oftentimes proves the destruction of many a Family; the Father puts out the Son perhaps with no less than 2 or 300 l. and is himself become bound for his Truth and just Accounting . The Servant is immediately trusted with his Cash, and then he too young experienced in the World, either neglects keeping a just account, or keeping that, subjects his Masters Cash to be spent by himself and those who make it their sole Trade to berray such Youths: The Master finding the consumption, calls his Servant to account, who conscious of the act, forfakes his Service, dares not see his Relations, and then as a general confequence falls into Company, the which nothing but Providence can preferve from taking their wicked courfes. The Father is called to answer, whatever the Master does say the Servant hath spent or imbezled, none being able to contradict him, he must with a heart full of grief submit to and pay, besides the loss of the Monies advanced upon the Servant's first putting forth: Which sometimes proves a great affliction in a Family. On the other fide, if Servants were not to be intrusted, the Mystery could not be learnt, nor the business dispatched; and therefore faith must be given: but then it were justice and honesty that as a Father puts perhaps the Child of his love to one in whom he reposes a faith and trust, that the Master should be then as a Parent, so they should prevent all occasions that might subject them to temptations, and not be over-hafty in trufting them with the Cash: which is the very Bair our London Gamesters catch such Gudgeons with.

If

If a Bill of Exchange by contrary Wind or other occafions be folong on the way, that the Usance or time limited by the bill be expired, and being tendred, both acceptance and refusal are denied; Protests for both must be made, and the Drawer must answer the value, rechange and damage.

XXVIII. A Bill once accepted, cannot be revoked by Raftal, fol. 339 the party that accepted it, though immediately after and Bald. in rubr. before the bill becomes due, he hath advice the Drawer de constit. pecu-

is broke.

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If a Bill is not accepted to be paid at the exact time, it & leg. quidem must be protested; but if accepted for a longer time, the ff. codem colops party to whom the bill is made payable, must protest the fame for want of acceptance according to the tenour; yet he may take the acceptance offered notwithstanding. Nor can the party, if he once subscribes the bill for a longer time, revoke the same, or blot out his name, although it is not according to the tenour of the bill; for by his acceptance he hath made himself debtor, and ownes the draught made by his Friend upon him, whose right another man cannot give away, and therefore cannot refuse or discharge the acceptance.

Note, This case will admit of two Protests, perhaps

three:

1. One Protest must be made for not accepting accord- Bald. in leg: pro ing to the time.

2. For that the Money, being demanded according to den. & per Barthe time mentioned in the bill, was not paid.

3. If the Money is not paid according to that time that col. 7. ff. probathe Acceptor subscribed or accepted.

A Bill was drawn payable the first of January, the perfon upon whom the Bill was drawn accepts the Bill to be paid the first of March, the Servant brings back the Bill: The Master perceiving this enlarged acceptance, strikes out the first of March, and puts in the first of January, and then fends the Bill to be paid, the Accepter then refuses; Per L. C. J. whereupon the person to whom the monies were to be Pemberton inter paid, strikes out the first of January, and puts in the first Price & Shute, of March again in an Adjanuary, and puts in the first Price & Shute, of March again, in an Action brought on this Bill, the 2, in B. R. question was, Whether these alterations did not destroy

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A. draws a Bill on B, and B. is in the Country; C. a Friend of his hearing of the bill accepts it: the party to whom the money is to be paid, must make a protest for non-acceptance by B, and then he may take the acceptance of C, and it shall bind C. to answer the money.

Pinchard verf. Fowk, Styles, fol. 416.

If a Bill is drawn on B, and B, happens to be in the Country, and a Friend of his defires the party not to protest, and he will pay the same, it is good, and shall bind fuch party.

Pafch. 1654. in B. R. Styles, fol. 370.

If there be two joynt-Merchants or Partners, and one of them accepts a Bill of Exchange, the fame shall bind the other; and an Action of the Case on the Custom may be maintained against him.

London.

XXX. Merchants generally allow three days after a bill becomes due for the payment; and for non-payment within three days protest is made, but is not sent away till the next Post after the time of payment is expired.

Holland.

If Saturday is the third day, no protest is made till Monday.

There are two Protefts: 1. For nonacceptance which is called intimation. 2. For nonpayment. * Which is looked upon to be the third day.

XXXI. The use of the Protest is this, That it fignifies to the Drawer that the party upon whom he drew his bill was unwilling, not to be found or infolvent, and to let him have a timely notice of the fame, and to enable the party to recover against the Drawer; for if one draws a bill from France upon a person in England, who accepts and fails, or becomes infolvent at the time of payment, if there be not a Protest and * timely notice sent to the Drawer there, it will be difficult to recover the money.

In Holland they are not altogether fo strict, yet there

must be a reasonable time of notice; the reason is, for

perhaps if he had reasonable and timely notice, the Drawer then might have had effects or other means of his upon whom he drew, to reimburse himself the bill; which fince for want of timely notice he hath remitted or loft. And the general Rule is, That though the Drawer is danger, be the bound to the Deliverer till the bill is satisfied, yet it is party never so with this Proviso, that protest be made in due time, and responsible, to a lawful and an ingenious diligence used for the obtaining payment of the monies; for it were unreasonable the Drawer should suffer through his neglect.

protest immediately if the

There is no

paid when it is due, i.e. the third day, but there may (especially beyond Seas) be great hazard for want of protesting.

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Book. II. Df Bills of Erchange.

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XXXII. Where a Merchant hath accepted, and before the same became due, he becomes insolvent, or at least his credit publickly blasted, a protest ought to go; but then in leg. pro debithere is usually a demand made, which once coming, to in fine c. de the Drawer is compellable to give better security; and if bon. author. Judi. poffiden. a second bill comes, if no protest, then Drawer and Security lye at stake.

XXXIII. If a Merchant draws a Bill, and there is a Protest for non-payment; if another person hearing of the fame, declare, that he for the honour of the Drawer will pay the contents, and thereupon subscribes, he is obliged thereby: and in this case it has been practised, that that party that received the money hath put his name on the back-side of the bill in blank; but the receipt is sometimes taken on the protest, which together with the whole proceeding is turned into an act, and the fame being drawn by the Notary, is remitted to the Drawer by him who gave honour to the bill.

XXXIV. If a bill be accepted, and the party dyes, yet Fourteen days there must be a demand made of his Executors or Admini- allowed from strators; and in default or delay of payment, a protest the death bemust be made: and although it may fall out, that the mo- fore Admininies may become due before there can be Administrators, committed,unor the Probate of the Will be granted; yet that is delay less there be a fufficient for a Protest in case of non-payment.

But on the other hand, if the party be dead to whom the monies are made payable, and the monies are ready to be paid, and there is no person that can legally give a discharge; yet a protest ought not to go for not payment; The reason is, because there is no person that hath any authority either in deed or in Law to make it, and a Notary ought not to make it; if he does, and the party hath Acceptor is received any prejudice thereby, an Action of the Case per-willing to pay haps may lye against him for his pains: nor does it avail, according to that if security be offered to save him harmless against the Order. Executors or Administrators, for that is an act left to his own discretion; for perhaps the security may not be lik'd: but whether good or bad, makes nothing as to oblige him in Law.

But if a man is bound in a Bond to pay a fumm of money to J. S. his Executors, Administrators, &c., and the Obligee dyes intestate the day before the summ becomes Ff 3

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due, yet the Bond is not forfeited if not paid at the day, because there was no body to whom the Obligor could pay to save his Obligation: But as Littleton says, If it be to pay to J. S. generally, you must hunt him out all over the Kingdom, if you'l save the penalty.

XXXV. A man not found, or being found, not met withal either at home or the *Exchange*, is cause sufficient for a protest; but in that there must be diligence used in

the finding him.

A bill returned protested for non-payment being once satisfied by the drawer to the deliverer, the drawer is discharged, and so is the Accepter to him to whom the monies were to be paid: but the Accepter, by virtue of his acceptance, makes himself a debtor according to the Custom of Merchants to the Drawer.

XXXVI. Monies may be had on Exchange by way of Letters of Credit, the which are in two respects; the first

general, the other special.

The general Letter is open, directed, To all Merchams and others that shall furnish my Servant or Factor, or any other with such and such Monies; for repayment of which he binds himself to answer and pay all such Bills of Exchange as shall be drawn on him upon the receipt of the value, by his Servant, Factor, or other person: If there be really monies advanced on this Letter of Credit, and paid to the Factor, Servant or other, and Bills of Exchange are sent to the party that sent such Letter of Credit, and if he resules to accept, yet according to the customs of Merchants he is bound to pay; The reason is, for there was no respect had to the ability of the taker up, but to him that gave his Letters of Credit: and therefore in such case if an Action at Law be brought, the particular custom as to that point must be carefully set forth.

The special Letters of Credit, where one writes a Letter to furnish another mans Factor or Agent; there is in

this the fame remedy as above.

As Bills of Exchange feldom come without Letters of Advice, so ought they to be pursued: If a bill shall express, And put it to the account of A; and the Letter of Advice says B; this must be protested against, for it cannot safely be paid, at least running the risque of an equitable Suit.

XXXVII. If

XXXVII. If one pays money on a bill before it be due, and the party breaks, it has been conceived that the party ought to answer the drawer: The reason hath been, because the drawer might have countermanded the same, or ordered the bill to be made payable to another.

In Italy if money is paid to a Banker's Servant, and if the Master subscribe, Pagate com si dice, this binds the Master as effectually as if he had subscribed it with his own

hands.

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XXXVIII. A Bill drawn by a Merchant in London payable by another person beyond Seas, such bills in most Countries are assignable over from Merchant to Merchant, and the last person may sue and recover the same upon an acceptance: but in England only the sirst person mentioned in the bill, and to whom the money is made payable may recover. 'Tis true, such person to whom the money is made payable, may for valuable consideration deliver this bill to another person, and he may endorse an Order on the back-side; and if the party afterwards resuses payment of the same, it may be sued in the parties name to whom the same was transferred, laying the same by way of Custom.

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CHAP. XI.

Of Ponies advanced by way of Bottomery, of Kenus Mauticum.

I. How Commerce is made equivalent to Natural Community.

II. Whether Money be fit only to maintain the Trade and Credit of Vice.

III. Whether Abraham chose to acquire a Property by Money.

IV. Of the natural and instrumental measure of the value of things.

V. How Money is equal to all things.
VI. Money is for buying, and hinders not, but helps Permutation.

VII. Money the instrument of Charity and Sacrifices as well as our Necessities.

VIII. Of the difference between Monies advanced to be used in Commerce at Land, and that which is advanced at Sea.

X. Of Monies advanced by way of Bottomery when the Contract hath its inception.

X. Of Monies fent on Ship-board, and the Veffel is wrecht, where the Lender shall bear share of the loss, and where not.

XI. Of Monies taken up by the Mafler, where the same shall oblige the Owners, and where not.

XII. The derivation and inflitution of this fort of Loan, and for what causes.

XIII. Of the several ways of taking up of Monies by way of Bottomery, real and seigned.

XIV. Monies fo advanced, whether gain ought to be bounded, or otherwife left to the will of the Lender.

XV. Of Usura Marina, how reasonable the same stands at this day.

XVI. Of Monies advanced to a confiderable profit called Usufruit, being both boness and honourable.

I. Oney is one of those things which they who want, want all other things but words to reproach their bad Fortune. But sometimes it is the policy even of Rags and Poverty it seif to undervalue that which it cannot have, and to convert that which it hath (though never somean) into an esteem; and then to lodge as much pride in a Tub, as Alexander could in a Palace, though it could not tempt him to a change of condition.

Nil habet infælix paupertas durius in se, Quam quod ridiculos homines facit

No wonder therefore, feeing Rich men will be obstinate to hold their advantages, that deformed Poverty (which mixes with them in the same frame as a shadow to set off their

Book II. Of Bottomery, or fænus Mauticum.

their colours the better) would have the Rich to descend to them; and that instead of fetting out monies by way of Bottomery, Usury, and the like, they would not have any fuch thing as money at all, but would have all things * Lib. I. cap. 1. reduced into a state as is afore mentioned *.

S. I, 2, 3.

It cannot be denied, but that we all live by the natural or intrinsick value of things; but the way to come by them is by an instrument of civil value, which is money; inflead of Community therefore we now have Commerce: which Commercium is nothing else but Communio mercium; but Communion must needs be by the means of another thing that may bear equal proportion on both fides, which is money only. But now let us hear, and if possible, fatisfie the complaints that are made against it so impatiently.

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Where there is great Luxury, there must be likewise great Industry to maintain it; and therefore the industry of this Civil State, must be greater than that which is in the simple state of Nature : but what is there here to Ascham de Nat. blame, feeing industry, no more than plenty, is in it felf Monet. cap. 6.

a Sin? II. It is the Answer of Envy or Ignorance, Prima peregrinos obsecena pecunia mores - intulit - Money is that (say they) which maintains the Trade and Credit of Vice, if that were taken away, we should look after nothing but necessaries, which are virtuous; it makes too nice inequalitics and distances, and is not significant enough in the best things: for all the money in the World is not really worth one penny loaf, which is convertible into our Natures and Substances; it serves only to assure Fortune, but not Vertue, it is accepted as the measure of all things Natural, Moral, and Divine: for Honour is nothing but ancient Richest, and in Morals, Virtus post nummos; this + Aris. Polit. in Religion breeds that root of all Evil, Covetoufness: for in a simple state of Nature necessary things must needs be fpent within a short time, and the return of the Sun brings a new supply and a Treasure greater than the Indies; of which One * makes this Observation, That it was got in * campanella blood, sails home in a Sea of blood, and never rests till Monarch. Hisp. it be laid out in blood. This was that which was made the Price of Salvation, even of the Blood of our Bleffed Saviour, thirty Pieces for that which was worth Thirty thousand

thousand Worlds; but in the Religion of the first Times, Nullo violatus Jupiter auro, as Juvenal hath it.

And if this had not been brought into the World, we should not have so much to discount for at the day of Judgment. Why therefore should that which is condemned to the obscurity of the Earth, and lodged so near Hell, now be made the price of all that which is above the Earth, even à Solo usque ad Cœlum? Or why should we be excluded from the Gitts of Nature, unless we have those of Fortune? Is it not then more reasonable that Rich men lose this instrument of Luxury, than the Poor should lose the necessary means of their subsistence? This is the Plea which is made in forma Pauperis, Et de ipsa paupertate.

Most certain it is, that neither the stupid simplicity of the Woods, nor Poverty it felf are any part of Vertue; and therefore are not reckoned Blessings, as Riches were to Solomon, (he who built Gods first Temple, and put his Religion in lustre) and as they likewise were to Numa, from whom money was called Nummus: He likewise built the first Temple at Rome, and kindled first the Vestal fire,

& ferocem populum deorum metu mitigavit.

III. We know how God conversed with Abraham, who was the first that had money, and made use of it to buy a Property: It is true, they with whom he inhabited called him a Prince; but that was no argument to him to difowne their properties, but for the contrary, lest they should think that Dominion or a Right to things was founded in Grace.

IV. But to come more close to the Question, and to examine the reason and necessity of this measure; Money is like a Law or Government, which are all constituted by the fame extreme necessity; therefore the counterseiting or attempting to destroy any of these by private means is every where Treason. Now this measure is twofold, either Natural or Civil, or rather natural, and the instrument which expresses the natural by equal Permutation: The natural measure is proportioned either by Want, or Plenty. In Want we consider whether the thing be useful or necessary; things which are necessary are best, but of least price; as a Loaf of bread is more necessary, but infinitely cheaper than a Diamond. One man hath Cloaths, another man hath Leather; those two possibly have no

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need one of another, and therefore there will be no Permutation betwixt them; but if one had need of another, then he wlo were most prest, would come to the price of the other: And therefore Want or Plenty is the measure of estimating things, and is the bond of Society, whereby one man shews he is or may be useful to another; and Nature hath fo ordered it, that no man is so Rich who hath not fome need of the Poor; and no man is fo mean and abject, but he may be fome ways useful to the Rich.

V. The Civil measure, or rather instrument, whereby Money is like the Natural expresses it self, is Money, which hath but a the middle feigned value, and therefore it is sometimes higher and term of a Syllower in elements men please, which could not be if its lower in esteem as men please; which could not be, if its it is said, Que value were natural which is unalterable. If I have Cloth conveniunt in at fuch a price, and you have Wines at the same price, tertio convenithen we regarding the same price, may make an equal unt interse. Permutation: Or if I give to you fo many pieces of Gold for your Cloth at the same price, the sale is equal again, whether it be an inconvenience that in some Countries* whether it be an inconvenience that in joine countries generally in it is fometimes at a higher value than at another, is not most of those a consideration of this Discourse; for the price of things Northern themselves change more than any money doth daily.

VI. Money is an invention only for the more expedite permutation of things; but it doth not follow that men may not make any permutations but by money, even as well now as if we were in our natural state; if they who dig now in waste Hills had their Harvest of Beans well gathered in, but had need of Wine for the stomachs sake, or of Drugs for healths fake, if the Vintner, or Apothecary have no need of Beans, what use will they make of the natural value of their Beans without money? Or if need be, what would they do till their Beans are gathered? Money therefore hinders not Permutation and Commerce of natural things, but affifts them; nay, it is therefore an instrument of instruments: for he who hath money may buy things which he need not use but fell, thereby to get other things afterwards for his use. There is no Nation or People fo barbarous, but have money or a publick instrument of permutation either in Metals or Fish-bones, &c. for it imports not much of what matter it is, provided it be durable, not counterfeitable, and difficult to come by. VII. Take

* Poland, and

Fide Chap. of

VII. Take away this fungible instrument from the fer-

vice of our necessities, and how shall we exercise our Charity, which is a branch of Religion and Justice, as well as of Humanity? He who goes to Church passeth as it were through two Temples, the Poor at the Porch, and the Temple it felf: and the giving at the Porch is called Sacrifice, Offering and Gift, as well as that at the Altar. God would be facrificed to only in one Town of the World, Jerusalem: but could that have been, if Money and Money changers had not been allowed? How could Exchange, 5.1. they who came from fuch remote places have by any other means brought their Oxen, Calves, Goats and Doves to the Altar? If there were nothing further to shew, but that one piece, which our Saviour himself covned miraculoufly in the mouth of a Fish, it were Argument sufficient that the use of Money may be both good, just, and necessary.

VIII. Things being thus stated, and that Money is both good, just, and necessary, it will be demanded loudly, That admitting a reasonable advantage may be made by way of Usury, quo jure is it that an advantage upon the same more

than what the Law allows, is taken?

Leg. 3. D. de rei Vindic. Locinius, lib. 2. cap. 4. 5. 2.

* Leg. For. Naut. leg. periculi eod.

The distinction is great between Monies lent to be used Naut. fan. lib. r. in Commerce at Land, and that which is advanced to Sea. eod. 1.62. D. de In the first, the Laws of the Realm have set marks to govern the same, whereby the Avaritious mind is limited to a reasonable profit; The reason of that is, because the Lender runs none, but the borrower all the hazard whatever that Money brings forth. But Money lent to Sea, or. that which is called Pecunia * trajectitia, there the fame is advanced on the hazard of the Lender, to carry (as is supposed) over Sea; so that if the Ship perishes, or a spoliation of all happens, the Lender shares in the loss without any hopes of ever receiving his monies; and therefore is called fometimes Usura Marina, as well as Fænue Nauticum, the advantage accruing to the Owners from their money, arifing not from the Loan, but from the hazard, which the Lender runs; the which is commonly reduced to a time certain, or one or more Voyages, according to their feveral and respective agreements.

IX. If the Bonds be fealed, and the Money is advanced, if the Ship happens to miscarry by Storm, Fire, Enemy, or

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any otherwise before the Voyage begun, then the borrower runs the rifque, unless it be otherwise provided vide passim ad generally, as that if fuch a Ship shall not arrive at such a leg. de Fon. place at fuch a time, &c. there the Contract hath its in. Naut. & DD. ception from the sealing; but if the Condition be, That leg. Naval. if such a Ship shall sail from London to Amsterdam, and shall not arrive there, &c. then, &c. there the contingency begins not till the departure. Yet it has been conceived, That if the Master takes up money accordingly and buys in a lawful Lading, but will happen to endeavour to defraud the Prince or State of their Customs, and puts fuch Goods on board, by means whereof he has incurred Vide leg. 3. c. a forfeiture of his Ship; in fuch case the Lender is not ob. de Fan. Naut. liged to fuch hazard.

X. If Money be lent on ship board by a Merchant Super Cargo or a Passenger, and before the day of payment the Ship happens to be wreckt or cast away; if there be such a Saver as will admit a Contribution, then the party is not to have his whole Money, but is to come into the Ave- Leg. Naval. Ariridge: but if the time of payment were past before the tic. 17. misfortune happened, then the Lender must be repaid his

whole money free from Contribution.

And therefore by the Laws Marine, if the borrower detains any fuch lent monies beyond the term appointed for the repaying, he shall at his return not only pay the profit agreed on before the Voyage, but also augment the Artic. 18. fame according to the time that hath accrued fince the

day of payment.

XI. A Master of a Ship hath no power to take up Money by Bottomery, in places where his Owner or Owners dwell, unless it were for so much only as his part comes to in the faid Ship: otherwise he and his Estate must stand liable nius in Peckium to answer the same. But when a Master is out of the quem vide pag. Country, and where he hath no Owners, nor any Goods 95. of theirs nor of his own, and cannot find means to take up by Exchange or otherwise, and that for want of money Leg. Oleron, c.1. the Voyage might be retarded or overthrown, Monies may Nant. fan. l. I. be taken up upon Bottomery, and all the Owners are liable c. eod. leg. qui thereunto; otherwise he shall bear the loss, that is, the Rome S. calli-Owners are liable by their Vessel, though the money is not machus de verb. fo employed in truth; and the Owners have their remedy ohl. & ibi Gothfr. & against him who they put in trust: but the persons of the alios.

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Owners

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Owners are no ways made liable by the act of the Master for Monies taken up.

Scarborough and Lyrius, Pasch. 3 Car. in B. R. Rot. fol. Noy 95.

If Owners agree not in fetting out the Ship, most voices shall carry it, and then money may be taken up for their part by Bottomery, or Fænus Nauticum, or by Hypothecating fuch a proportion of the Ship.

16 Car. cap. 6. A good Law, and ought to be encouraged; it's pity it was not continued.

Many Mafters of Ships having Enfured or taken up Monies upon Bottomery to greater Sums of Money than the value of their Adventure, do wilfully cast away, burn, or otherwise destroy the Ships under their charge, the same was made Felony, and the person or persons so wilfully doing or procuring the same to be done, were to suffer death.

* Joh. Locin. lib. 2. c.4. S. I. Latche's Rep. fol. 252. Scarborough's Case. + Tefte Cambdeno in Britan-

XII. The fignification of this Fanus Nauticum, is by the Dutch called Bomerie, Bodmerie, Boddemerij; fo variously pronounced from the Keel * or bottom of the Ship upon the parallel, whereof the Rudder of a Ship doth govern and direct the same, parte pro toto sumpta, it a primum appellata, cum etiam lingua Gallorum antiqua & Britannica Bodo vel Bodun fundum aut profundum signet † in quem navis fundum, vel ipsam navem ejusq, usum mutuo accepta est pecunia, nia, p. m. 149. Sed postea latius pro fænore nautico etiam usurpari cæpit. And the money fo taken up by the Master is done upon great extremity, and that for the compleating of the Voyage when they are in diffress and want in some Foreign parts: and indeed fuch taking up is indeed in the nature of Mortgaging the Ship, for le Neife oblige al payment de ceo, &c. And in the Instrument there is a Clause that expresses that the Ship is engaged for the performance of the fame.

Locinius, lib.2. cap. 4. S. I.

> Monies that are advanced are upon two Securities, the one is on the bare Ship, the other upon the person of the borrower, fometimes upon both: The first is where a man takes up monies and obliges himself, that if such a Ship shall arrive at such a Port, then to repay (perhaps) double the fumm lent; but if the Ship happens to miscar-

ry, then nothing.

XIII. So likewise some will take up Monies, the condition reciting, Whereas there is such a Ship, naming her, bound to Amsterdam, whereof such a man is Master, (whereas indeed there is no fuch Ship or Master in nature) that if that Ship (ha'l not arrive at such a place within twelve-months, the money agreed on to be paid shall be paid; but if the Ship

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shall arrive, then nothing. The first of these is honourable and just according to the laudable practice among Marine persons; and though the advantage runs high, as 20, 30, nay fometimes 40 per Cent. without confideration of time ; Tototic. Dig. & for the monies are to be paid within fo many days after the fan. & Dollo-Ship's fafe arrival; yet in regard the Adventure is born rum sic hardus by the Lender, for (if the Ship perishes, the Advancer in tit. cod. de loses) the Laws and Practice of all Maritime Countries Naut. fun. n. 4. allow of the same. And therefore by the Common Law, Trajettitia peif an Action of Debt be brought on fuch an instrument, cunia propter pethe Defendant cannot plead the Statute of Usury. And fo riculum creditoit was adjudged where one Sharpley had brought an Acti. ris quamdiu naon of Debt on a Bond for Monies taken up upon Botto- vigatnavis, inmery; The Defendant pleads the Statute of Usury, and finitas usuras shewed, that a certain Ship called the Voyage to Fish in New-found-Land, (which Voyage might Law it was obbe performed in eight months) and the Plaintiff delivered ferved by Ani-50 l. to the Defendant to pay 60 l. at the return of the anus, Quia maship to D, and if the faid Ship by Leakage or Tempest mittitur quanshould not return from New-found-Land to D, then the tas convenerit Defendant should pay the principal money; and if the usuras hanc pe-Ship never returned, then nothing to be paid. Upon cuniam dare cre-* Demurrer it was adjudged the same was not Usury: for ditor potest. if the Ship had staid at New-found Land two or three Verum enimveyears, yet at her return but 60 l. was to be paid, and if ro hic proprie fhe never returned, then nothing.

made a upon which

non versari damnatum fæ-

nus, sed compensationem aliquam periculi, quod creditor contra naturam mutui in se recepit patrim. Johannes Locinius, lib. 2. cap. 4. S. 1, & 2. * Trin. 6 Jac. in B. R. 2 Cro. 258. Sharpley versus Harroll.

The other advance which is upon a fictitious supposition of a Ship and Master, where indeed there is no such in nature, is more unconscionable, the same being the common practice that's used amongst the Italians, and now on this fide the Water, though the fame is as to internal Right unjust; yet it is daily practifed, and it was not long fince adjudged that fuch Contract was good, ac. tc. B. Hill. cording to the Common Law of this Realm, and that on a 22, 23 Car. 2. Special Verdict.

Opinion

XIV. Most certain it is, that the greater the danger is, if there be a real Adventure, the greater may the profit be of the monies advanced: And so hath the same been the

Vide Carolum Molinæum de ait, boc approbant omnes ditor possit aliguid accipere

Opinion of Civilians, and likewise some Divines; though fome feem to be of opinion, That any profit or advantage usur. q.3. n. 92. ought not to be made of monies so lent, no more than of those that are advanced on simple loan, and on the peril of Theologi ut cre- the borrower. However, all or most of the Trading Nations of Christendom do at this day allow of the same, as a matter most reasonable, by reason of the contingency or ultra forcem pro hazard that the Lender runs; and therefore fuch monies culi. But furely may be advanced feveral ways, and a profit may arise fo. that must be that there runs a peril on the Lender.

upon a real venture. Cl. Salmafius, cap. 9. de modo ufur. fol. 380. 188. 218. Trajectitia pecunia propter periculum creditoris, quamdiu navigat navis, infinitas usuras capere potest. Upon which place Anianus observes, Quia maris periculo committitur in quantas convenerit

usaras banc pecuniam dare creditor potest. Vide Novel. Conft. 106. 110.

There is likewise a second way of advancing of Monies called Usura Marina, joyning the advanced monies and the danger of the Sea together; and this is obliging fometimes upon the Borrower's Ship, Goods and Person: The product of which by agreement will advance fometimes 20, 30, and sometimes 40 per Cent. As for instance, A private Gentleman has 1000 l. ready money lying by him, and he has notice of an ingenious Merchant that has good Credit beyond Seas, and understands his business fully, applies himself to him, and offers him 1000 l. to be laid out in such Commodities as the Merchant shall think convenient for that Port or Country the Borrower deligns for, and that he will bear the Adventure of that money during all that Voyage; (which he knows may be

raturid eft,cum tesima est.

accomplished within a year) hereupon the Contract is ejus qui traje- agreed upon , 6 per Cent. is accounted for the Interest, Elitiam pecuni- and 12 per Cent. for the Adventure outwards, and 12 per am trans mare Cent. for the Goods homeward; fo that upon the return webendamfane- the Lender receives 30 per Cent. which amounts to 13001. periculo suo, cen. The Lender in this case hath a good bargain, no question. Now let us fee what advantage the Borrower hath.

1. The Borrower prevents the taking up the like Sum at Interest which comes to 6 per Cent. and Brocage which comes now in this Age, through the generolity of the Merchant, and coverousness of the Scrivener, at 1 or 2 per Cent. more; and then the fame is let out but for fix months,

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months, and then the Scrivener inevitably at the fix months end fends his Note, that his Friend expects his monies to be paid in; so that to stop that gap there must be Continuation, which is at least one per Cent. more, befides the obliging of Friends in Securities.

- 2. The Assurance is prevented, which perhaps may come to between s and 20 per Cent. according as the Times are; and common prudence will never fuffer a Merchant to venture two parts of three parts of his Estate in one Bottom without alluring.
- 3. As he shall not have occasion to Ensure, so it may be a great occasion of preventing the common Obligation of his Enfuring of others; the which in a generous Merchant in honour cannot be denied, the Premio running reasonable.
- 4. It prevents the parties running the Risque and danger of the Seas, Enemies, or any other fatal lofs, and hath been a means to introduce a mans credit in a short time at leffer charge, if not to put him in a condition not to be beholden to fuch a fair, though chargeable means.

And this cannot be Usury by the Laws of this Realm,

for the Rifque and danger that the Lender runs.

XV. There is also another way, but that is both honest and honourable, called Usufruit, that is, a Stock in a In the East-Company or Society which is perpetual; fuch a Stock or India, and in fome other Portion may be purchased, that is, the advantage or bene- Companies.

fit arising by the improvement of the same.

As for instance, The East-India Company hath a Stock lodged in their hands by divers perfons, which they in the most prudent manner as they fee fit, imploy to fuch places as they judge most proper; if a return is made, the advantage of that is distributed to each person that is any way entitled to that Stock: which advantage is called a Dividend, and perhaps may afford some 20 or 30 per Cent. But on the other hand, if that proportion of the Stock which goes out happens to miscarry, the abatement is proportionable, and so the Stock may be lessened, unless that they will stay the Dividends to keep up the Stock; the Gg

Df Bottomery, of Fænus Mauticum. Book II.

Northee, Palch. 27 Car. 2. in B. R. adjudged cial Verdict.

Pindfold versus which they may do; For it is a Trust reposed of so many mens Monies in their hands, to yield them such advantage as they shall upon a just account set out: So that if a man hath 1000%. there on a Spe. Stock, he cannot take the same out of the Great Stock whereby to lessen the same, but he may transfer that whi. fruit by that Customary way which they have to any other person, for a valuable consideration infinitum. Such a Stock of 100 l. in the East-India Company in time of War might have been purchased for 80 l. Nett; but now in time of Peace scarce got under 170, or 1801. the Dividends running high.

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XII. CHAP.

Of Impositions called Great Customs, Petty Cultoms, and Subüdies.

1. Impositions, whether they may be commanded without the Three Eflates, and of Magna Charta touching the same.

II. Of Impositions made voluntary by consent of Merchants, and of the

adnul of the same.

III. Of the Confirmation of the Great Charter for free Traffick; and of the Settlement now made on His Majesty of the same.

IV. Of the Immunities formerly of the Hanfiatick Towns here in England, and when determined.

Publicans as well in former Ages as at this present time, in most Nations.

VI. Of the Imposition called Magna Custuma.

VII. Of that which is called Parva Custuma payable by Strangers, and the Act called commonly Charta Mercatoria.

VIII. Of Subfidy, and of what, and the Rates how set.

IX. Of Subfidy by Strangers on Wines.

X. Of Goods not rated how to pay. V. Of the Antiquity of Customers or XI. Of the Subsidy-Duty for Cloaths.

Hat Impositions neither in the time of War or other the greatest necessity or occasion that may be, (much less in the time of Peace) neither upon Foreign nor Inland Commodities of what nature foever, be they never fo superfluous or unnecessary, neither upon Merchants Strangers nor Denizens may be laid by the King's absolute Power without Assent of Parliament, be it never so short a time.

By the Statute of Magna Charta, Cap. 30. the words are, All Merchants, if they were not openly prohibited before, (hall have their fafe and fure Conducts, to enter and depart, to go and tarry in the Realm, as well by Land as by Water, to buy and sell without any Evil Tolls, by the Old and Rightful (ustoms (except in time of War) and if they be of the Land making War against Us, and be found in Our Realm at the beginning of the War, they shall be attached without harm of Body or Goods, until it be known to Us or Our Justices how our Merchants be intreated there in the Land making War against Us. The Statute of which this is a branch, is the most ancient Statute-Law we have, won and fealed with

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the Blood of our Ancestors, and so reverenced in former times, that it hath been 20 times folemnly confirmed in Parliament.

Rot. Almaign. 3 Ed. 3. Rot. Clauf. 29 Ed. 1. Extract. Bruxelles.

II. Impositions were in some fort done Consensu Mercatorum, by Edward the First, and Edward the Third: And again in Henry the Eighth, of which the House of Burgundy complained, as against the Treaty of Entercourse.

King Henry the Third finding that fuch a Modus of Impolition tended to the destruction of Trade, and apparent overthrow of Commerce, and was against the Great Charter, made Proclamation Anno 16. in all Ports of England, That all Merchants might come faciendo rectas & debitas 16 Hen. 3.n. 20. consuetudines, nec sibi timeant de malis tollis, for that such

Dorf. Clauf. an.

Impositions had no better name than Maletolts. The like was declared and done by Edward the First in the twenty fifth year of his Reign, and Edward the Second,

in the eleventh and twelfth years of his Reign.

Rot. Clauf. 11 Ed. 2.

And though the King cannot lay any Imposition on Merchants or Merchandize without Affent in Parliament, yet the King by his Prerogative may restrain them from Trading (if not from any Christian Foreign Prince) yet from any Infidel Realm, State, or People without his Royal Licence; And the reason of this is, for that by tes's Case, this such Commerce it might give occasion for the relinquishment of the Catholick Faith, and an opportunity to adhere to Infidelism; and therefore generally in Edward the Third's time Licences were frequently granted with this Preamble, That the King having special trust and confidence that the party would not decline from his Faith, did license him, &c. In the seventh of King James's time this very matter came in question, upon Licence granted to a Merchant to trade to the East-Indies.

Vide Lane's Report in Bamatter there debated.

Mitchelbourn and Mitchelbourn's Cafe. C. B. Frownlow's 2. Part, fol. 296.

> III. In 2 Ed. 3, the Great Charter for Free Traffick was Confirmed; and about some three years after there were Commissions granted for the raising of a new kind of Tallage, but the people complained; whereupon the Commissions were repealed, and he promised never to affels any but as in the time of his Ancestors.

12 Ed. 3. Memb. 22. indor . Rot. Almaigne.

But this Prerogative Power of Imposing inward and outward upon Commodities over and above the ancient Cufrom of Subfidy without a free confent in Parliament, is now ceased and settled; And that question which for many

Ages

Ages had been handled by the most Learned of their times, The Parliain the afferting and in the denying, will never more be ment having remembred, the same being now establisht by Act of Parliament: which being managed for fome time, was after- luntarily hum-The like having been done by former bly presented wards farmed out. Kings, as did Edward the Third with the * New and Old fuch and many Customs of London for 1000 Marks monthly to be paid more who are unto the Wardrobe.

cording to their feveral limitations. * Clauf. Anno 5 Ed. 3.

Richard the Second, Anno 20. Farmed out the Subfidy Orig. 17 Ed. 3. of Cloth in divers Counties.

So Edward the Fourth, Henry the Eighth, Queen Eliza- Vide the great beth, and King James; the fame having been used in for. Case in Mich. mer Ages even in the best governed State, Rome, which 4 Jac. in the let out Portions and Decim's to the Publicans.

IV. The Old Dance Lowns, viz. Lubeck, Collen, Brunf. fol. 22. wick. Dantzick and the rest, had extraordinary Immunities granted unto them by our Third Henry, for their great affistance and furnishing him in his Wars and Naval Expeditions with so many Ships; and as they pretended the King was not only to pay them for the Service of their Ships, but for the Vessels themselves in case they miscarried: The King having concluded a Peace, and they being on their return home for Germany, the most considerable part of their Fleet miscarried by storm and stress of weather; for which (according to Covenant) they demanded reparation. The good King in lieu of that which he wanted, Money, granted them divers Immunities; and amongst others, they were to pay but I per Cent. Custom, which continued till Queen Mary's time, and by the Advice of King Philip she enhanted the I to 20 per Cent: The Hans not only complained, but clamoured aloud for breach of their Ancient Priviledges confirmed unto them by long Prescription from thirteen successive Kings of England, and the which they pretended to have purchased with their money. King Philip undertook to accommodate the business, but Queen Mary dying, and he retiring, nothing was effected. Complaints being afterwards made to Queen Elizabeth, the answered, That as the would not innovate any thing, so the would protect them still in the Immunities and Condition she found them. upon Gg 3

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versus Bates. Lane's Rep.

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upon their Navigation and Traffick was suspended a while, which proved very advantageous to the English, for they tryed what they could do themselves herein, their adventures and returns proving fuccessful, they took the whole Trade into their own hands, and so divided themselves to Staplers and Merchant-adventurers; the one reliding constant at one place, the other keeping their course and adventuring to other Towns and States abroad with Cloth and other Manufactures. This fo nettled the Hans, that they devised all the ways that a discontented people could to draw upon our new Stap'ers or Adventurers the ill opinion of other Nations and States: but that proving but of too small a force to stop the Current of so strong a Trade as they had got footing into, they reforted to some other; whereupon they applied themselves to the Emperour, as being a Body incorporated to the Empire; and upon complaint obtained Ambassadors to the Queen to mediate the business: but they returned still re infecta. Hereupon the Queen caused a Proclamation to be published, That the Merchants of the Hans should be intreated, and used as all other Strangers within her Dominions in point of Commerce, without any mark of distinction

This inflamed them more, whereupon they bent their Forces more eagerly, and in an Imperial Diet at Ratisbone they procured that the English Merchants, who had affociated themselves in Corporations both in Embden and other places, should be adjudged Monopolists; whereupon there was a Comitial Edict procured against them that they should be exterminated, and banished out of all parts of the Empire; which was done by Suderman a great Civilian. There was there at that time for the Queen as nimble a man as Suderman, and he had the Chancellor of Embden to second him, yet they could not stop the Edict, whereby our new erected Society of Adventurers were pronounced a Monopoly: Yet Gilpin played his Cards for well, that he prevailed the Imperial Ban should not be published till after the Diet; and that in the interim his Imperial Majesty should fend an Ambassadour to England to advertise the Queen of such proceedings against her Merchants. But this made fo little impression on the Queen, that the Ban grew rather ridiculous than formidable, for the Town of Embden harboured our Merchants

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notwithstanding, and afterwards the Town of Stode; but the Hansiaticks pursuing their revenge, and they being not so able to protect them against the Imperial Ban, removed and fetled themselves in Hamburgh.

This Politick Princess, in recompence of their revenge, commanded another Proclamation to be published, 'That the Hansiatick Merchants should be allowed to trade into England upon the same Conditions as they formerly did . Provided the English Merchants might have the ' fame Priviledges to refide and trade peaceably in Stode or · Hamburgh, or any where else within the Precincts of the This fo incenfed and nettled them, that all endeavours were made to cut off Stode and Hamburgh from being Members of the Hans, or of the Empire: but the Design was suspended till they saw the success of 88, King Philip having promised to do them some good offices in the Concern.

But the Queen finding that the Hans were not contented with that Equality she had offered to make betwixt them and her own Subjects; but were using such extraordinary means, put forth another Proclamation, 'That they should transport neither Corn, Victuals, Arms, Timber, Masts, * Cables, Metals, or any other Materials or Men to Spain or Portugal. And not long after the Queen growing more redoubled and famous by the Overthrow of King Philip's Invincible Armado, (as the Pope christned it) the Hans began to despair of doing any good, especially they having about fome 60 Sail of their Ships taken about the River Lisbon by her Majesties Frigats, that were laden with Ropas de contrabanda. She notwithstanding had thoughts of discharging this Fleet by endeavouring a reconcilement of the differences: but she having intelligence of an Extraordinary Assembly at Lubeck which had purposely met to consult of means to be revenged of her, the thereupon made absolute Prize of those 60 Sail, only two were freed to carry home the fad Tidings of their Brethrens misfortune. Hereupon the Pole fent a ranting Ambassadour in the behalf of the Hans, who spake the Injuries done to the Hans in a high tone. But the Queen her felf fuddenly answered him in a higher, with a satisfaction no greater than what she had done to others of the like quality before. This

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This fortunate Clashing for the 19 per Cent. on the Customs, has proved ever fince advantageous for England, our Merchants have ever fince beaten a peaceful and an uninterrupted Trade into High and Low Germany; and by their constant Trade in those Parts have found a way thorow the White Sea to Arch-Angel and Mosco. The return of all which hath fince vastly increased the Riches and Strength of this Nation.

Foseph. locutus de Pompeio, l. I. de Bello. Fud. C. 5. P. 720.

V. After the Fews became Tributary to Rome, (which was acquired by Pompey threescore years before the Birth of our Saviour) certain Officers or Commissioners were appointed by the Romans in all those places where their Victorious Standards had claimed a Conquest, who used to appoint fuch Officers or Commissioners to collect and gather up fuch Custom-money or Tribute as was exacted by the Senate. Those that gathered up these Publick payments were termed Publicani Publicanes, and by reason of their cruel and oppressive Exaction, they became hateful in all Nations.

F Sigon.de Antiq. Fur. Civ. Rom. 1.2. c. 4. Luke 13. 2.

Every Province had its feveral Society or Company of Publicans; * every Society its distinct Governour: in which respect it is that Zaccheus is called by the Evangelists. Princeps Publicanorum, the chief Receiver of the Tribute, or chief Publican: And all the Provincial Governours in these feveral Societies had one chief Master or Superintendant residing at Rome, unto whom the other subordinate Governours gave up their Accounts. These Publicans were hated of all the Roman Provinces, but especially of the Fews, because though it was chiefly maintained by the Galileans, vet it was generally inclined unto by the Jews, That Tri-Exercit. 3. 37. bute ought not to be paid by them. This Hatred is confirmed by the Rabbinical Proverb, Take not a Wife out of that Family wherein there is a Publican, for such are all Publi-Yea, a faithful Publican was fo rare at Rome it felf, that one Sabinus, for his honest managing of that Office, in an honourable remembrance thereof, had certain Images with this Inscription, Karos Terwingarls, For the faithful Publican. No marvel that in Holy Writ Publicans and Sinners go hand in hand.

Sueton.in Flav. Vesp. cap. I.

If. Cafaubon,

But now the World has been so long used to them, that in all or most Nations the parcicular Princes or States chuse out the most Sage and Prudent men for that Imploy-

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ment: And certainly the Customs of this Realm never did return to that great and clear Account as they have done under the care and prudent management of the prefent Commissioners: And were Tertullian alive, he would have recanted that Opinion of his, That none would be a 1609.) de pu-Publican but a Heathen.

dis. cap. 9.

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VI. Customs are Duties certain and perpetual payable to the King as the Inheritance of his Crown, for Merchandizes transported from and beyond the Seas from one Realm to another. Magna Custuma & antiqua is payable out of Native Commodities, scilicet, Wooll, Woollfels and Hides, and that is certainly imposed.

And this Custom which is called Magna Custuma, is due

to the King of Common Right for four Causes:

1. For leave to depart the Kingdom, and to carry Commodities of the Realm out of it.

2. For the Interest and Dominion which the King hath in the Sea, and the Arms thereof.

3. Because the King is the Guardian of all the Ports within the Realm, & Cuftos totius Regni.

4. For Whaftage and Protection of Merchants upon the Seas against the Enemies of the Realm and Pirates.

VII. The Custom which is called Parva Custuma, is a Custom or Duty payable by Merchants Strangers, and begun in the time of King Edward the First, when they I Eliz Dyer, granted him, that they would pay to him and his Heirs fol. 165. 3 d. in the pound for all Merchandizes Exported and Imported by them, &c. And that the Charter was and may be of great Use. I have here inserted the same, as it was faithfully transcribed out of the Roll in the Tower.

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For Merchant Strangers concerning Liberties granted to them.

44. intus.

31 Ed. 1. num. THe KING, to his Archbishops, &c. sendeth Greeting. Concerning. the good Condition of all the Merchants of the Kingdoms, Lands, and Provinces under-written: That is to fay, Germany, France, Spain, Portugal, Navarr, Lombardy, Tuscany, Provence, Catalonia; Our Dukedoms of Aquitain, Tholouse, Turein, Flanders, Brabant, and all other Lands, and Foreign places, by what name foever called, coming into Our Kingdom of England, and there remaining.

We being very folicitous out of Our especial Care, that under Our Dominion, a freedom of Tranquillity, and full Security for the faid Merchants may be provided for the future, fo as they may the more readily apply themselves to the fervice of Us, and of Our Kingdom, We graciously anfwering their Petitions, and ordaining more amply for fecuring their Condition in form following underwritten, are pleased to grant to the faid Merchants for Us and Our Heirs for ever.

Pro Mercatoribus Alienigenis de Libertatibus eis concessis.

EX, Archiepis. ec. Sa= Tutem. Circa bonum fatum omnfum Wercatorum fublcriptozum Kegnorum, Aerrarum, a Pzobinciarum, bidelicet, Alemann. Franciæ, Hifpaniæ, Portugaliæ, Navarr. Lumbardiæ, Tusciæ, Provinciæ, Cathaloniæ, Ducatus noftri Aquitann. Tholosan, Tatureini, Flandr. Brabant. # om= nium aliarum terrarum, a locorum ertraneorum quo: cunque nomine cenfeantur, benientium in Kegnum noftrum Angliæ, a ibidem conberfantium.

Pos precipua cura folicitat. qualiter fub noftro dominio tranquillitatis, . plene fecuritatis immunitas eifdem Mercatozibus futuris tempozibus pzeparetur : ut itaque bota ipfozum reddantur ad noffra,a Megni nostri ferbicia promptioza 3 iplozum Petitionibus fabo. rabiliter annuentes, a pzo fatu eorundem plenius affecurando, in forma que fequitur ozdinantes fubscripta, dictis Percatozibus pzo nobis, a heredibus nostris in perpetuum durimus concedenda.

Impri-

Imprimis, Midelicet, quod omnes Mercatozes dictozum regnozum e terrarum falbo a secure sub tuitione a pzotectione noftra in dictum Regnum noftrum Angliæ, a ubique infra poteffatem nostram alibi beniant cum Werchandiffs fuis quibufcunque, de Muragio, Pontagio, e Pavagio, liberi e quieti: quodque infra idem Keanum a Poteftatem no-Aram, in Cibitatibus, Burgis, a Willis Bercatoziis posint mercari, duntaxat in groffo, tam cum Indigenis, feu Incolis efufdem Regni, a potestatis noffre previcte, quam cum Alienigenis ertraneis bel pribatis. Ira tamen quod Herces que bulgariter Merceriæ becantur ac Species, minaciatim bendi poffint, prout antea fieri consuebit: Et quod omnes pzedicti Wercatozes Werchandifas fuas quas ipsos ad predictum Kegnum & Potestatem nofram adducere, seu infra idem Kegnum a Poteftatem noffram emere, bel alfas adquirere contigerit ; poffint quo boluerint, tam infra Kegnum e Potestatem noffram predictam; quam ertra ducere, seu poztari facere, præterquam ad terras manifestorum, & notoriorum hostium Regni no-Itri, folbendo confuetudines

Imprimis, That is to fay, That all Merchants of the faid Kingdoms and Lands, may come from any other place, fafe and fecure under Our Tuition and Protection into Our faid Kingdom of England, and every where within Our Dominion, with their Merchandizes of what fort foever, and be unmolefted, and quiet concerning a Murage, b Pontage, and Repairing pub-Pavage, and that within lick walls. Our faid Kingdom and Do. Pavements. minion, they may traffick in the Cities, Boroughs and Market Towns, only in grofs, as well with Natives or Inhabitants of this Our Kingdom and Dominion aforefaid, as with Strangers, Foreign, and Domestick; but fo, as their Wares vulgarly called Mercery or the SPECIES thereof, they may fell by retail, as formerly hath been accustomed. And that all the faid Merchants may carry, or cause to be carried whither they please, their Merchandize weh they have brought into Our faid Kingdom and Dominion, or otherwise acquired; except to the Lands of the manifest and notorious Enemies of Our Kingdom, paying the Customs which shall be due, Wines only excepted, which shall not be exported out of Our faid Kingdom or Dominion,

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minion, after they have been imported into Our faid Kingdom or Dominion, without Pleafure and special Licence, by any way or means whatsoever.

Item, That the faid Merchants may lodge in the Cities, Boroughs, and Towns aforefaid, at their own pleafure, and there stay with their Goods, to the content of them who entertain them.

Item, That every Contract made by the faid Merchants with what persons foever, and from what places foever, for what kind of Merchandizes foever, shall be firm and stable, fo that neither of the Merchants shall depart from, or go back from his bargain, after a Gods. penny is given and received, between the principal persons contracting; and it it happen that a contention arise on the said Contract, there shall be a Tryal, or Inquilition, according to the Usages and Cultoms of the Fairs, and Towns where fuch Contract shall be made or begun.

Item, We promise to the aforesaid Merchants, and for Us, and our Heirs for

consuetudines quas debebunt, Vinis duntaxat exceptis, que de eodem Regno, seu Potestate nostra, postquam infra idem Regnum, seu Potestatem nostram duca suerint, sine bosuntate nostra e sicentia speciali, non siceat eis educere quoquo modo.

Item, Duod pzedicti Percatozes, in Cibitatibus, Burgis pzedictis pzo bolunlate lua bospitari baleant, a morari Aillis ac cum bonis suis, ad gratum ipsozum quozum suerint pospitia sibe bomus.

Item, Quod quilibet contradus per iples Wercato res cum quibuscunque pers fonis, undecumque fuerint, fuper quocumque genere Merchandile, initus, fire mus fit a flabilis; ita quod neuter Mercatozum ab illo Contradu poffir difcedere, bel refflere, poliquam denarius Dei inter pzincipales personas contrabentes, das tus fuerit e receptus. fi fozfan fuper contractu bus julmodi contentio oziatur, fiat inde probatio aut inquis fitio fecundum ufus e cons flietudines feriarum, & bil= larum ubi didum contras dum fieri contigerit , & iniri.

Item, Pzomittimus pzesfatis Hercatozibus pzo nosbis, a heredibus nofiris, in

perpe:

perpetuum concedentes. Quod nullam prisam vel arreltationem, feu dilationem occasione prisæ de cætero de Mercimoniis, Merchandifis, feu aliis bonis fuis per nos, vel alium, feu alios, pro aliqua necessitate vel casu, contra volunatem ipsorum Mercatorum aliquatenus faciemus, aut fieri patiemur; nisi statim soluto pretio pro quo ipsi Mercatores aliis hujufmodi mercimonia vendere possint, vel eis alias fatisfactio ita quod reputent se contentos, & quod fuper mercimonia, merchandisas, seu bona ipforum per nos, vel miniftros fuos, nulla appreciatio, aut æstimatio imponetur.

Item, Wolumus, Duod omnes Ballibi , a Miniftri Feriarum, Cibitatum, Bur= gozum, e Willarum Wercatoziarum, Wercatozibus ans tedictis conquerentibus cos ram eis, celerem justitiam faciant de die in diem fine dilatione, fecundum LE-GEM MERCATORIAM. de uniberffs a Angulis que per eandem Legem potes runt terminari. Et fi fozte inbeniatur defectus in aliquo Balltbozum bel Wini= strozum pzedictozum unde iidem Mercatozes, bel eozum aliquis dilectus incommoda

ever grant, That We by no means whatfoever will make, nor fuffer to be made any Prize, or Arrest, or detention by occasion of Prize, for the future, upon their faid Wares, Merchandizes, or other their Goods by Us, or by any other, or others in any case and necessity whatfoever, against the will of the faid Merchants, without the price presently paid, for which the faid Merchants might fell to others, Wares of the like fort for, or otherwise to satisfie them, so as they shall repute themfelves contented. And that no Appraisement or value shall be put upon the said Merchants Wares, Merchandizes, or Goods, by Us or our Ministers.

Item, We will, That all Bailiffs, and Officers of Fairs, Cities, Boroughs, and Market Towns, shall do speedy Justice to the said Merchants complaining to them, from day to day, without delay, according to the Merchants Law, concerning all and every thing which by the faid Law may be determined. And if any defect shall happen to be found in any of Our Bailiffs or Ministers aforefaid, whereby the faid Merchants, or any of their Factors shall suffer loss, al-

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though the Merchant recover his losses against the party in the whole, Yet nevertheless, the Bailiss, or other Ministers of Ours, as the fault requires, shall be punished; and We grant the said punishment in favour of the Merchants aforesaid, for compleating their right.

Item, That in all kinds of Pleas, faving in the case of Crime, for which the pain of Death is liable to be inflicted.where the Merchant shall be impleaded, or he implead another, of whatfoever condition he that is impleaded be of, whether a Foreigner or a Domestick, in the faid Fairs, Cities, or Boroughs, where there is a sufficient plenty of Merchants of the Lands aforefaid, and Inquifition there ought to be made; Half of the Inquisition shall be of the said Foreign Merchants, and the other half of honest and lawful men, where the Plea happens to be: And if a fufficient number of the Merchants of the faid Lands shall not be found, let those be put in the Inquisition who shall be found fit in that place, and let the relidue be of other good and fit men, in the places in which that plaint shall be.

fustinuerint, bel sustinuerit, licet Percatoz bersus partem in pzincipali recuperaberit dampna sua, nibilominus Ballibus, bel minister alius bersus Pos,pzout delicium erigit, puniatur, s punitionem isam concedimus in sabozem Percatorum pzedictozum, pro eorum justitia maturanda.

Item, Duod in omnibus generibus placitozum, falbo catu criminis pzo quo inflis genda fit pæna moztis, ubí Mercatoz implacitatus fu erit, bel alium implacita berit, cujuscunque conditionis idem implacitatus ertiterit, ertraneus bel pzis batus, in Pundinis, Cibis tatibus, fibe Burgis ubi fuerit lufficiens copia Wers catozum pzedictarum terras rum, a Inquistio fieri de beat, sit medietas Inquisitionis de eisdem Mercatoribus, & medietas altera de aliis probis & legalibus hominibus loci illius, ubi placitum illud esse contigerit: Et ff de Wercatozibus dictas rum Aerrarum numerus non inbeniatur fufficiens, ponantur in Inquisitione illi qui idonei invenientur ibidem, & residui sint de aliis bonis hominibus, & idoneis, de locis in quibus placitum illud erit.

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Item. Molumus, Dedi namus, & Statumus, Duod in qualibet Willa Wercato= ria , e feria Regni noftri pzedicti, galibi infra Pote= statem nostram, Pondus nostrum in certo loco ponas tur, gante ponderationem Statera in prefentia Emptozis a Menditozis bacua bideatur, e quod bzachia Ant equalia, e ex tunc Ponderatoz ponderet in æquas li, a cum Stateram police rit in æquali, fatim amobeat manus fuas ita quod remaneat in æquali, quodq; per totum Regnum, & potestatem nostram unum sit pondus & una mensura, & figno Standardi nostri fignentur, & quod quilibet possit habere Stateram unius Quarteroni & infra, ubi contra Dominum loci. aut libertatem per Pos, feu Antecestozes nostros cons cestam illud non fuerit, fibe contra billarum aut feria rum consuetudinem bactes mus obserbatam.

Item, Molumus a conscedimus, Auod aliquis cerstus homo, a fidelis, a discretus London restdens, as signetur Justiciarius mercatoribus memoratis, cozam quo baleant specialiter plascitare, a debita sua recupes rare celeriter, si Micecomistes a Pajozes eis non faces rent de die in diem celeris

Item, We will, Ordain, and appoint, That in every Market Town and Fair of Our faid Kingdom, and elsewhere within our Domininon, Our Weight is to be put in a certain place, and before weighing thereof, the Scale to be empty in the presence of Buyer and Seller, and the arms thereof to be equal, and when he hath fet the Scale equal, he is forthwith to take off his hands, fo that it may remain equal; And that throughout Our whole Kingdom and Dominion. there be one Weight and Measure, both of them sealed with the fign of Our Standard, and that every one may have a Scale of one Quarteroni and under where contrary to the Governour of the said place, or Liberty by Us, or Our Ancestors was not granted, or contrary to the Custom of the Villages and Fairs hitherto obferved.

Item, We will and grant,
That fome certain faithful
and discreet person residing
in London, may be appointed
a Justice in behalf of the before mentioned Merchants,
before whom they may
plead specially, and more
speedily recover their debts,
if the Sheriss and Mayors
distribute not to them, day

by day, compleat and speedy Justice; that then a Commission be granted to the aforesaid Merchants, besides this present Charter, viz. concerning those [Goods] which are to be conveyed between Merchants and Merchants, according to the Merchants Law.

Item, We Ordain and Appoint, and our Will and Pleasure is, for Us and Our Heirs. That this Ordinance and Statute be firmly kept for ever, notwithstanding any liberty what foever which We or Our Heirs for the future shall grant; the said Merchants ought not to lose their above written Liberties, or any of them: And for and in consideration of their obtaining the faid Liberties and free Usages, and Our Prifes to be remitted to them: All and fingular the faid Merchants for themfelves, and all others on their part, have heartily and unanimoully granted to Us that for every Hog head of Wine which they shall bring in, or cause to be brought in within Our Kingdom or Dominion thereof; and from whence they are obliged to pay Freight to the Mariners, to pay to Us and to Our Heirs, by the name of Cufrom two shillings over and above the ancient Customs

justitiæ complementum, q inde siat Commissio extra chartam presentem concessa Percatoribus ante dictis, scilicet, de hijs que sunt inter Percatores a Percatores, secundum LEGEM MERCATORIAM deducenda.

Item, Dedinamus a Statuimus , a Dedinationem illam Statutumque Nobis & Hæredibus nostris in perpetuum Volumus firmiter observari, quod p20 quacunque libertate quam Pos bel Beredes noftri de cætero concedimus, pzefati Wercatozes Cupza-Criptas Libertates, bel earum alis quam non amittant. 1020 Supradictis autem libertatis tibus a liberis consuetudis nibus obtinendis, a Pziffs nostris remittendis eisbem Capedicti Mercatozes un's berff a finguli peo fe a oms nibus alijs de partibus fuis, Dobis concoediter a unas nimiter concesserunt aucd de quolibet Dolio vini quod adducent, bel adduct facis ent infra Kegnum a Potes statem nostram , & unde Marinariis frettum folvere tenebuntur, folbent Dobis a Beredibus notiris nomine Custumæ, duos Solidos uls tra antiquas Cultumas des bitas, a in Denarijs folbi confuetas, nobis aut alijs infra

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infra quadzagingta dies noffquam ertra Pabes ad Zerram poffta fuerint dicta hina.

Item, De quolibet Sacco Lanæ, quem didi Wercato. res, autalij nomine ipforum ement, & de Regno no= fire educent, aut emi, o educi facient, folbent quadraginta Denarios de incres mento,ultra Cuftumam antiquam dimidiæ Marcæ que pzius fuerat perfoluta. Et p20 Lafto Coziorum ertra Regnum a Potestatem no= ffram bebendozum dimidiam Marcam, supra id quod ex antiqua Cultuma antea folbebatur ; Et fimiliter de trecentis pellibus Lanutis, ertra Regnum e Potetta= tem noftram, deducendis, quadzaginta denarios ultra certum illud quod de anti= qua Custuma fuerat pzius datum.

Item, Duos Solidos de qualibet Scarleta, q panno tindo in grano.

Item, Decem e octo des natios de quolibet panno in quo pars grani fuerit intermixta.

Item. Duodecim dena= rios de quolibet panno alio fine grano.

Item , Duebecim dena= rios de quoliber Ceræ quin= talle.

due, and accustomed to be paid in pence within forty days after the faid Wines are put on shore out of the Ships.

Item, For every Sack of Wooll, which the faid Merchants or others in their names do buy, and out of this Kingdom transport, or buy to transport, shall pay forty pence over and above the ancient Custom of half a Mark, which formerly was paid. And for a Last of Hides carried out of this Our Kingdom and Dominion thereof, to be fold, half a Mark over and above that which according to ancient Custom was formerly paid; and likewise for three hundred Woollfels to be carried out of this Kingdom. forty pence, belides that certain fumm which according to ancient Custom was formerly given.

Item, Two Shillings for every Scarlet, and Cloth dy-

ed in grain.

Item, Eighteen pence for every Cloth in which part of a grain-colour is intermixt.

Item. Twelve pence for every other Cloth without grain.

Item, Twelve pence for every Quintal of Wax.

> Hh And

it (bould be Sindonibus, of Lawn , Cambrick, or other fine Linen.

And whereas fome of the faid Merchants deal in other Commodities, as Goods weighed with Avoir-du-pois Weights, and in other fine Goods, as Cloth of Tarfen, " It is supposed of Silk, of * Cindatis, of Hair, and in divers other Merchandizes, in Horfes also, and other Animals, Corn. and other Wares and Merchandizes of different forts. which cannot easily be put to a certain rate of Custom; The faid Merchants have confented to give Us and Our Heirs for ever Twenty shillings Estimation and value of those Wares and Merchandizes, by whatfoever name they be called, three pence in the pound, upon the Entrance of their Wares and Merchandizes into Our Kingdom and Dominion aforefaid, within twenty days after fuch Wares and Merchandizes shall be brought into Our Kingdom and Dominion aforesaid, and there shall be unladen, or fold. And likewise three pence for every twenty shillings, at the Exporting of what kind foever of Wares or Merchandizes bought in Our Kingdom and Dominion aforesaid, besides the ancient Customs formerly given to Us, or to others. And over and above the value and estimation of the faid Wares

Cumque de presatis sper catozibus nonnulli eozum alias ererceant Werchandi las, tit de Aberto ponderis. e de alijs rebus fabrilibus. ficut de pannis Tarfen. de Serico, de Cindatis, de Deta . galijs diberlis mer cibus , a de equis etiam, ac atijs animalibus, Blado . # alijs rebus, a Merchandiffs multimodis, que ad certam Cuftumam facile poni non poterunt, ijdem Wercatozes concesserunt dare Pobis Beredibus notiris de quas libet libza argenti estimatio nis feu balozis rerum , a Werchandifarum bujulmodi quecunque nomine cenfean tur, tres denarios de libra in introitu rerum, a Wers chandifarum ipfarum in Keanum a Potestatem no firam predictam infra bi ginti dies poliquam bujul modi Kes a Werchandifæin Kegnum a Potestatem no Aram adductæ, a etiam ibis dem eroneratæ, fibe benditæ fuerint. Et similiter tres denarios de qualibet libra argenti in eductione quas rumcunque rerum, a Ders chandifarum bujusmodi em ptarum in Kegno a Potelies tate notra predictis, ultra Cultumas antiquas nobis, aut alijs ante datas. Et super baloze e estimatione rerum a Werchandifarum bujusmodi, de quibus tres

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denaris de qualibet libza argenti sicut pzedicitur sunt solbendi; credatur eis per literas quas de Dominis aut socijs suis ostendere poterunt, o st literas non babeant, Stetur in bac parte ipsozum Percatozum si pzesentes suerint, bel ballettozum suozum in eozundem spercatozum absentia juramentis.

Liceat insuper Socijs de Societate Percatozum pzedictozum infra Kegnum g
Potestatem nostram pzedis
cam, lanas bendere alijs
socijs suis, g smiliter es
mere ab eisdem absque Cus
suma solbenda; ita tamen
quod diste Lanæ ad tales
manus non debeniant, quod
Custuma nobis debita des
fraudemur.

Et præterea est sciendum. Duod poliquam fæpedicit Mercatozes femel in uno loco infra Kegnum o Potes flatem noftram Cuftumam nobis concessam superius. pro Werchandiffs wis in tozma folberint supzadicta e faum babeant inde Warrantum, erunt liberi e quieti in oninibus alijs ločis intra Kegnum & Potestatem nos firam predictamide folutione Custumæ bujusmodi pzo eisdem Werchandiffs, feu mercimonijs per idem Warrantum, libe bujulmedi

andMerchandizes for which three pence for every twenty shillings as aforesaid are to be paid; they are to have credit by Letters, by them to be produced from their Principals or Partners, and if they have none, Let it be determined in this case, by the Oaths of the said Merchants, or in their absence, of their Servants.

Moreover, It may be lawful for the Society of the Merchants aforefaid, to fell Wooll to the Fellows of the faid Society, and likewife to buy the fame one of another within Our Kingdom and Dominion, without payment of Custom: Provided that the faid Wooll come not to such hands whereby we may be defrauded of Our Customs.

And furthermore be it known, That after the faid Merchants have once in any one place within Our Kingdom and Dominion paid our Custom's granted, as aforefaid, to Us, for their Merchandizes in form aforefaid, and thereupon they have their Warrant, they shall be free, and unmolested in all other places within Our Kingdom and Dominion, from payment of the faid Custom for the same Commodities or Merchandizes by the faid Warrant, Hh 2 whewhether fuch Merchandizes remain within Our Kingdom and Dominion, or are carried out, Except Wines, which without Our leave or licence, as aforefaid, are by no means to be Exported out of Our Kingdom.

We will also, and for Us and Our Heirs grant, That no Exaction, Prife or Loan, or any other burden shall be imposed in any part or measure on the persons of the said Merchants, their Merchandizes, or Goods contrary to the form before expressed and granted.

Witness hereto, The Reverend Fathers Robert Archbishop of Canterbury Primate of all England, Walter Bifhop of Coventry and Litchfield, Henry de Lacy Earl of Lincoln, Humphrey de Bohun Earl of Hereford and Effex, and Constable of England, Adomarus of Valentia, Galfrid of Geynvil, Hugh de le Spencer, Walter de bello Campo Chamberlain of our House, Robert of Bures, and others. Given by Our Hand at Westminster the First day of February.

Perchandice infra Kegnum & Potestatem nostram remaneant, sibe exterius deferantur, Greeptis binis, que de Regno & Potestate nostra predictis, sine bolumte o licentia nostra sicut predictum est, nullatenus educantur.

Volumus autem, ac pro Nobis & Hæredibus nostris concedimus, Auod nulla Gractio, Pzisa bel Pzestatio, aut aliquod aliud onus super personas Mercatozum pzedictozum, Merchandisas, seu bona eozundem aliquatenus imponatur, contra sozmam erpzessam superius, a concessam.

Die testibus benerabili bus Patribus Roberto Cantuariensi Archiepiscopo to tius Angliæ Pzimate, Waltero Coventr. & Litchf. @pifcopo, Henrie de Lacy, Co mite Lincoln. Humfrido de Bohun Comite Hereford. & Effex, ac Constabular. Angl. Adomar. de Valentia, Galfrido de Geynvill, Hugone le de Spencer, Waltero de bello Campo Senescallo Hospitii nostri, Roberto de Bures galijs. Dat. per mas num noffram apud Westm. pzimo die Febz.

Sir John Davies VIII. Subfidy is a Duty payable for Merchandizes Exin the Case of ported and Imported, granted by Act of Parliament for customs.

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1. Aids and Subfidies payable out of Native Commodi-

ties Exported and Imported.

2. Tunnage, which is a Subsidy out of Wines of all Vide the Stat. 3 forts; and Poundage, which is a Subfidy granted out of all 12 Car. 2. of Commodities Exported and Imported, except Wines and Tunnage andancient Staple Commodities, and is the twentieth part of Poundage. the Merchandize, Imposts or Duties payable for Merchandizes rated and affested by Parliament; and then they are in the nature of Sublidies imposed by the Kings Prerogative.

The Rates are generally agreed on by the Commons House of Parliament, and are exprest in a Book commonly called the Rates of Merchandize; that is to fay, the Subfidy of Tunnage and Poundage, and the Subfidy of Woollen Cloaths or old Drapery, and are subscribed with the

hand of the Speaker.

IX. All Merchant-Strangers bringing in any fort of Wines, are to pay Thirty shillings on the Tun over and above the Rates which the Natives pay, including Twenty shillings the Tun formerly paid to His Majesty by the name Southampton Duties, for all Wines of the growth of the Levant; for which fort of Wines, the Stranger is also to pay to the use of the Town of Southampton for every Butt or Pipe Ten shillings.

Aliens are likewise to pay the ancient Duty of Butle- Vide intit. Pri-

rage, which is 2 s. per Tun.

Rule, That all such Wines as shall be landed in any of the Out-Ports, and Custom paid, and afterwards brought to the Port of London by Certificate, shall pay so much more Custom as they paid (hort of the Duty due in the Port of London.

For every Tun of Beer to be Exported in shipping Eng- Directions in lish built in money must be paid Two shillings: And for Tunnage. every Tun of Beer Exported in any other shipping in mo-

ney fix shillings.

X. If there shall happen to be brought or carried out of Directions in this Realm any Goods liable to the payment of Custom Poundage. and Subfidy which are omitted in the Book of Rates, or are not now used to be brought in or carried out, or by reason of the great diversity of the value of some Goods could not be rated; That in fuch case every Customer or Collector for the time being, shall and may levy the faid Custom and Subsidy of Poundage according to the value

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and price of fuch Goods to be affirmed upon the Oath of the Merchant in the presence of the Customer, Collector, Comptroller and Surveyor, or any two of them.

XI. Every English-man shall pay for every short Cloth Directions for containing in length not above 28 Yards, and in weight the payment of not above 64 l. white or coloured by him to be shipped and carried out of this Kingdom, Three shillings four on Woollen Clothes, or old pence, being after the rate of two farthings and half a Drapery. farthing the pound weight.

> And so after that rate for all other forts of Clothes of greater length and weight, allowing not above Twenty eight Yards, and fixty four pound to a short Cloth; that is to fay, for every pound weight over and above fixty four pound, two farthings and a half farthing: and for all other forts of leffer Clothes to be allowed to a fhort Cloth: that is to fay, every Stranger shall pay for every short Cloth cont' in length not above 28 yards, and in weight not above 641. white or coloured by him to be shipped or carried out of this Kingdom, Six shillings eight pence, befides the old Duty of one shilling and two pence.

> And so after that rate for all other forts of Clothes of greater length and weight; and for all forts of leffer Clothes to be allowed to a short Cloth: That is to say,

> Dorset and Somerset Dozens, Rudge washt, Cardinals, Pinwhites, Straits, Statutes Stockbridges, Tavestock, seven of each fort shall be allowed to a short Cloth.

> Tauntons, Bridgwaters, and Dunstars, the fifth not exceeding 64 l. in weight; Devon. Dozens containing 12 or 13 yards, in weight 13 l. five to be allowed to a short Cloth.

> Ordinary Pennystones, or Forest Whites cont' between 12 or 13 yards, and in weight 28 pounds, Shorting Pennyfones cont' 13 or 14 yards, and in weight 35 pounds unfrized, four to be allowed to a short Cloth.

> Narrow York-shire Kersies Whites and Reds cont' not above 17 or 18 yards, and in weight 22 pound. Hampshire ordinary Kersies, Newberry Whites, and other Kersies of like making cont' 24 yards, and in weight 28 1. Sorting Hampshire Kersies cont' 28 pound, and in weight 32 pound; Three of them to make a short Cloth.

> Northern Dozens, fingle forting Pempfones cont' between 13 and 15 yards, and in weight 53 pound Frized,

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Two of them to make a short Cloth.

And the Northern Dozens double, one to be accounted for a short Cloth.

All which shall go and be accounted for short Clothes, and shall pay after the rate of the short Cloth before rated, and for over-weight two farthings and one half the pound.

The New fort of Cloth called the Spanish Cloth, otherwise Narrow List, Western Broad Cloth not exceeding 25 yards in length, and 43 pounds in weight, to be accounted two thirds of the short Cloth before rated.

And for every pound weight exceeding 43 pounds, two

farthings and half a farthing the pound weight.

Cloth Rashes alias Cloth Serges cone' 30 yards weighing 40 pound, to be accounted two thirds of the short Cloth before rated.

And for every pound exceeding 40 pound weight, two

farthings and half a farthing the pound weight,

And for any other fort of Woollen Cloth of the Old or New Drapery, and not mentioned in that Book, to pay two farthings and half a farthing the pound weight: And for any other fort of Woollen Cloth of the Old or New Drapery and not mentioned, is to pay two farthings and half a farthing for the Subsidy of every pound thereof.

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and price of fuch Goods to be affirmed upon the Oath of the Merchant in the presence of the Customer, Collector, Comptroller and Surveyor, or any two of them.

Directions for the payment of the Subfidy upon Woollen Drapery.

XI. Every English-man shall pay for every short Cloth containing in length not above 28 Yards, and in weight not above 64 l. white or coloured by him to be shipped and carried out of this Kingdom, Three shillings four Clothes, or old pence, being after the rate of two farthings and half a farthing the pound weight.

And so after that rate for all other forts of Clothes of greater length and weight, allowing not above Twenty eight Yards, and fixty four pound to a short Cloth; that is to fay, for every pound weight over and above fixty four pound, two farthings and a half farthing: and for all other forts of leffer Clothes to be allowed to a fhort Cloth; that is to fay, every Stranger shall pay for every short Cloth cont' in length not above 28 yards, and in weight not above 641. white or coloured by him to be shipped or carried out of this Kingdom, Six shillings eight pence, befides the old Duty of one shilling and two pence.

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And for any other fort of Woollen Cloth of the Old or New Drapery, and not mentioned in that Book, to pay two farthings and half a farthing the pound weight: And for any other fort of Woollen Cloth of the Old or New Drapery and not mentioned, is to pay two farthings and half a farthing for the Sublidy of every pound thereof.

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CHAP. XIII.

Df Impositions Sublequent, Conditional. Tempozary, &c.

I. Of Impositions on the Manufactures | VIII. Impositions on Foreign Liquors, of France by Lex Talionis.

II. On Vinegar, Perry, Cider, and IX. Of Native Commodities, and Rape, Cuftoms payable by Denizens and Strangers, and Log-wood made Importable.

Decks, and 16 Guns.

IV. On Salt, Beer, Cider, Perry, Vinegar, a further Duty.

V. Of the Duty called Coynage, and upon what imposed; and the temporary Imposition called the Additional Duty.

VL Of Goods particular Imported by Aliens; and Rules for petty Cufloms and other matters relating to Duties.

VII. Of Aliens Customs on Fish and

and Rates on the fame.

fach as were formerly prohibited may be transported, paying certain

III. On Ships that have not two X. Beer, &c. Exported; Skins, Leather, &c. Transportable, paying Such Duties - Bulloign and Covn only excepted.

XI. Of Spices Importable by any Nation.

XII. Of great and leffer Officers Fees, and of Goods not paying one pound Custom in or out, what Fees to be taken.

XIII. Voluntary Gifts from Some efleemed on Bribes; and Rates 4bout payment of Fees.

other Commodities, and Rates upon XIV. Of Allowances for Juy,

Subsequent Impositions to the Act of Tunage, and the Book of Rates.

12 Car. 2.

E- 1.

I. There are feveral Duties imposed subsequent to the Duties payable by the Book of Rates, and over and above the same; that is to say, on all Ships belonging to nage & Pound- the French King's Subjects, which shall lade or unlade any Goods in this Kingdom, or fet on shore or take in any Passenger, or pay 20 s. per Tun: This was an Oliver for a Rowland, the French King having done us the like kindness, by imposing the value of 50 Solz on every English Ship; this complement lasts but three weeks longer than the French

King's, his removed, ours drops. II. So likewise on Vinegar, Perry, Rape, Cider, and This collected as the Tunnage Cider-eager imported from Foreign parts per English, shall and Poundage answer Six pounds ten shillings per Tun; if by Strangers, is directed. then but fix pounds.

But if they shall Export, then Taree pounds ten shil-

shillings per Tun shall be repaid to the English, and Four 14 car. 2. c. 11, pounds fifteen shillings to be repaid to Strangers. Eliz. cap. prohibiting the Impor- ing of Fraud. The Statute of

tation of Logwood Repealed; and the same may be Imported paying 5 l. per Tun: and in case of Exportation

then to be repaid 41. per Tun.

III. The Parliament taking likewise again into consideration the encouragement of Trading in Ships of force, have imposed on all Goods and Merchandize Imported and Exported from and to the Mediterranean Sea, beyond Malaga, in any Ship that hath not two Decks and fixteen Pieces of Ordnance mounted, and two men to each Gun, to pay over and above the Rates imposed by the Book of Rates one per Cent'; This does not extend to Ships laden 14 car. 22. with Fish, or half laden with Fish and other Commodi- cap. 11. ties.

IV. So likewise on Salt out of Scotland into England, one

half-penny per Gallon.

Again, There is imposed on Wines, Vinegar, Cider and Beer, Ten shillings per Tun; and on Brandy and Strong Waters 20 s. per Tun. For the Coynage Duty, the monies that arile on this Duty are to be paid at the Custom-House to the Collectors and other Officers, to be by them kept apart from all other monies, and paid Quarterly into the Exchequer without Salary or Fee: The Goods are 18 Car. 2. cap. 5. forfeitable for non-payment of this Duty; and the same is to be repaid, if the Goods are transported within one

V. There was likewise an Imposition of 12 l. per Tun 22 Car. 2.cap. 3. on Spanish Wines, and & l. per Tun on French Wines and Vinegar, which was but temporary, and ended the 24th

of June, 1678.

VI. There are also Duties payable by Aliens for Goods Per Act of Nav. Imported in Aliens Ships, commonly called Navigation- 12 Car. cap-18. Duties.

So likewise all Goods of the growth, product or Manu-particular Com-

facture of Muscovia or Russia, and also of Turkey.

Note, That in all cases where petty Custom inwards is merated there. payable, it is to be understood of the fourth part of the full Subfidy according to the Rates and value in the Book of Rates before the 5 per Cent. is deducted.

Vide the Statutes, and the modiries enu-

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Note, Wines of all forts Imported are to pay Aliens
of Strangers

Note, Wines of all forts Imported are to pay Aliens

Wines.

Note, That the Nett Sublidy of Vinegar, Perry, Rape,
Wines.

Cider, and Cider-eager both in London and Out-Ports,

14 Car. 2. Vide is the same with the Sublidy of French Wines, payable in

Table of French London.

Aft of Naviga-Aliens Custom for all Fish, Oyl, Blubber, Whale-bone, or tion, 12. Car. 2. Whale-fins, not being caught in Vessels belonging to Engcap. 18. Lish men, are to pay double Strangers Custom.

Act of Trade,

So likewise Custom and Impost to be paid for several

15Car. 2.cap. 7. forts of salted or dried Fish not imported in Ships English
the particular
enumerated, and caught in such Ships.

Upon which ACT, Note, That the 5 per Cent. is not

to be allowed out of the petty Custom.

12 Car. 23,24. VIII. There is likewise an Excise or Impost upon Fo22 Car. 2. 4. reign Liquors imported; that is to say, Beer or Ale 6.

per Barrel; Cider or Perry the Tun ten shillings; Brandy

or Strong Waters perfectly made 8 d. per Gallon.

If any of those Goods be landed before those Duties be
15 Car. 2. c. 11. fully paid, and Warrants signed, and without presence of

an Officer, they are forfeited, to the Informer half.

IX. There are likewise Duties imposed on several Commodities Exported by several Acts of Parliament subsequent to the Act of Tunnage and Poundage.

Coals transported in English Shipping and Navigation
Act for Trade, for his Majesties Plantations in lieu of all Custom, shall
is Car.2.cap.7. pay only for one Chaldron of New-Castle Measure 1 s. 8 d.
For one Chaldron London Measure 1 s. Provided good Se-

active be given for landing the faid Coals accordingly.

There are likewise several Native Commodities and 22 Car.2.cap.3.

Cattle prohibited by divers Acts of Parliament not to be transported unless fold under such prices; but non obstante they may now be Exported, paying Custom according to

the Book of Rates.

22, 23 Car. 2. X. There is likewise an Imposition on Beer, Ale, and 20 Car. 2. cap. 5. Mum to be Exported, to pay 1 s. per Tun and no more;

but this is but pro tempore for fix years.

So likewise Leather of all forts, Sheep-skins, Calveskins, tanned or dressed, non obstante any former Law, paying for each hundred weight cont' 1121, weight one shill

ling

ling and no more: This ended in 25th of March, 1675. 20 car. 2. cap. 5 and both of them to the end of the next Sellions of Parliament after.

Likewise all forts of Foreign Coyn or Bullion of Gold or Silver may be Exported without paying any Duty or A& for Trade; Fee for the fame, Entry being first-made in the Custom- 15 Car. 2.cap. 74 House; the like for Diamonds, Pretious Stones, Jewels,

and Pearls of all forts.

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XI. All persons whatsoever may Import from any place beyond Sea in English Ships, Mace, Nutmegs, Cinamon, Cloves into England, Wales, Ferfey, Guernsey, paying the Customs thereof. Provided before the lading thereof Proclam. car. they give notice to the Commissioners or Farmers of the 1662. Aug. 26. Customs of the quantity and quality they intend to lade, 1663. But see with the name of the Vessel in which they intend to im- 14 Car. 2. conport the same, and procure a Licence under the hands of cerning Cuthe faid Farmers or Commissioners, or any three of them for the Importing the fame.

Note, If Goods are wreck't, and the Lord feizes them,

yet they ought not to pay Custom *. cobham's Cafe. The like not long fince adjudged in the common-Pleas (on a Special Verdict found at St. Edmonds-Bury in Suffolk) about Mich. 25. or Hill. 25 & 26 Car. 2.

XII. Fees and Allowances due and payable to the Officers of his Majesties Customs, and Subsidies in the Port of London, and the Members and Creeks thereunto belonging; that is to fay, to the Officers of the petty Customs Outwards, Subfidy Outward; Petty Customs Inwards, Subsidies Inwards, Great Customs, Clerks Fees Inwards and Outwards, the Kings Waiters being in number Eighteen, the Register of the Kings Warrants, the Usher of the Custom-House, Gaugers of French Vessels, Chief Searcher, and his Majesties five Under-Searchers in the Port of London; and the two Searchers at Gravefend, were all fet and entred in a Table; the fame was fetled by the Commons House of Parliament, and signed by the Right Honourable Sir Edward Turner late Lord Chief Baron of Virtute cujufhis Majesties Court of Exchequer, and then Speaker to the dam Ordin. & Commons House of Parliament. at which time the Own. Com. Sab-Commons House of Parliament; at which time the Que- bati 17. Maij, flion being put, That for all Goods not paying one pound 14 Car.2. Regu. Custom in or out, there shall be but half Fees taken for all Cocquets, Warrants, Debentures, Transires or Certifi-

Regis, Dec. 20.

* Sir Francis Moor's Report, fol. 224. Lord

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cates; It was Refolved in the affirmative.

XIII. Societies or Companies trading in a joynt stock. and making but one fingle Entry, the Adventurers being many, the Table of Fees does not hinder; but the Officers and Waiters may receive fuch gratuity as the Company shall voluntarily give.

All Goods under the value of \(\gamma \). in the Book of Rates paying Sublidy the fumm of s. or less, shall pass without

payment of Fees.

English Merchants that shall land out of one Ship at one time (although the receipt of the Sublidy be distributed into feveral Offices) shall not pay any more than for a fingle Entry.

The Goods of Partnership to pass as if the propriety

were in one fingle person.

Fish by English in English Shipping or Vessels Inwards or

Outwards all along the Coast to pay no Fee.

Post-Entries inward to pass without Fee under five shillings; if above five shillings and under forty shillings, then fix pence: but if the Custom to be paid exceed 40s, then full Fees.

The Merchant shall pay for all Goods opening that shall be short entred above 10s. Custom.

The Merchant shall pay for weighing of all Goods that shall be short entred above 20 s. Custom.

The Merchant is not to be at any charge, if duly Entred.

Tare and Tret. or Covering fideration allowed in the weight for emfelling the Goods.

XIV. There is likewise to be allowed to the Merchants the first is the a certain abatement called Tare, for Goods and Merchanweight of the dize, the which is reduced into a Table, and cannot be Cask, or Bale deviated from in any case within the Port of London, withwherein Goods out special direction of the Commissioners or Farmers; or are packed; the in their absence of the consent of the General Surveyors, other is a con- and Surveyor of the Ware-house, or of two of them at the least, whereof the Surveyor of the Ware-house to be one; and in the Out-Ports not without the confent and advice prying and re- of the Collector and Surveyor: or where there is no Surveyor, by the Collector himself, giving speedy notice to the Commissioners or Farmers of the reason of so doing.

CHAP.

CHAP. XIV.

Di Scabage, Package, Porterage, Water Baillage, Pozts, Bemberg, Creks, the Pozt of London, and places lamful to lade and unlade in.

I. Scavage what, where payable, and VIII. Of Ports, Members, and Creeks, to whom.

II. Who pay the same, and how regulated and governed.

III. Goods omitted in the Scavage Table of Rates, bow to pay.

IV. Of Package, how governed, and where payable.

V. Where Strangers (hall pay as of

VI. Of Packers, Water-fide Porters, what Duties Strangers are to pay for shipping out their Goods.

VII. Of the Duty of Water-Baillage.

what are meant and understood by them in reference to action, lawful or unlawful.

IX. The several Ports, Members, and creeks in England and Wales.

X. Of the Extent of the Port of Lon-

XI. Of the feveral Keys, Wharfs, and other places lawful for landing of Goods.

XII. What Goods are excepted which may be shipped or landed at other places.

I. Cavage is an ancient Toll or Custom exacted by Mayors. Sheriffs, &c. of Merchant-Strangers for Wares shewed or offered to sale within their Precincts, which is prohibited by the Statute of 19 H. 7. cap. 8. in a Charter of King Henry the Second to Canterbury, it is written

Scewings.

The City of London still retains the Custom, of which in an old printed Book of the Customs of London it is there mentioned, and how to be disposed; of which Custom, balfen del appertepneth to the Sherriffs, and the other ballen del to the Pollys, in whole boules the Perchants ben lodged : And it is to wet that Scabage is the few, by caute that Werchants fewen unto the Sherriffs Werchandizes of the which Customes ought to be taken oze that any there be fold, &c.

II. The Scarage that is taken confifts of two parts, that which is payable by Denizens, and that which is required 22 H. 8. cap. 8. of Aliens: And that all persons subject to such Duties

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might be not imposed upon, there are Tables mentioning the particular Duties fet up and approved by the Lords Chancellor, Treasurer, President, Privy Seal, Steward, and two Justices of the Kings-Bench and Common-Pleas; and by them subscribed; or any four of them at least: The which Duties are on Goods Inwards and Outwards.

III. Note, All Goods mentioned in the Table of Scavage, and not mentioned in the Table of Rates; shall pay after the rate of one penny in the pound, according as they are expressed or valued in his Majesties Book of Rates. HEarl of Man- and all others not expressed therein, shall pay the same

chefter, Lord Rates according to the true value.

Note, That all private Baulks 8 inches square and up. wards, are by the 23. Article annexed to the Book of Rates reputed Timber, and valued at 3 d. the foot, 40 foot making one Load, the value of which is 12 s. 6 d; and the Sublidy for one Load & of one penny, or one half penny and half one farthing, out of which the sper Cent, is to be deducted.

IV. There is likewise another Duty called Package, the which is likewife fet and rated in a Table, and the which is taken of all the feveral Commodities therein

mentioned.

All Goods not mentioned in that Table are to pay for Package Duties, after the rate of one penny in the pound, according as they are expressed or valued in his Majesties Book of Rates, and all others not expressed therein shall pay the fame rate according to their true value.

For every Entry in the Packer's Book for writing Bills to each Entry outward, as usually they have done, 12 d.

V. The Strangers are to pay the labouring Porters for making up their Goods, at their own charge, as always they have done.

Strangers are likewise to pay the Water-side Porters belonging to the Package-Office, fuch Fees and Duties for Landing and Shipping their Goods, as they usually have

done within these ten years.

VI. The Packers Water-fide Porters have Tables of Duties for landing of Strangers Goods, and for the shipping out their Goods; and Goods not mentioned in the Table are to pay Portage Duties as other Goo!s do of like Bulk or condition therein exprelled.

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VII. There is another ancient Duty called Water-Baillage, which the City of London have received time out of mind, viz. for all Goods and Merchandize imported as well from any Port within the Realm to the Port of London, as from any part out of the Realm to the fame, and so the like Duties (with some variances) for all fuch Goods as shall be exported from the Port of London to any other Port within the Realm, fo likewise without: of this Duty all the Citizens and Free-men of the City are exempt; and though the same is very ancient *, and was * 5.7uly 1 706. once but small, in regard, within memory, it was looked upon as an Honour for a Merchant to be a Citizen of London, and fo confequently freed; but now, especially since the late Wars, abundance of persons eminent both for Honours and Estates, being unwilling to entangle them-felves in the publick affairs of the City, do refuse absolutely to accept of the Fieedom of the fame, fince which there have been great contests with those Traders; and though the Coast-Duties have been agreed to, yet the I Aug. 21 R. 2. Foreign now arifing to fome confiderable value, is highly entred in the disputed. And though Charters, Acts of Parliament, led Dunthorn, Common Councils, continued tracts and footsteps of an- fol. 96, 6 97. cient Evidences and Records, are yet extant to evince and Reportery ult. make out the most apparent Title that may be, the same Aug. 19 H. 8. nevertheless labours under the greatest difficulty amidst 20st. 3 fac. the divisions of its Proprietors.

VIII. Port or locus Publicus, are those places to which Portus qua pabthe Officers of the Customs are appropriated, and which iscus non folum contain and include all the Priviledges and guidance of all mercibus exone-

Members and Creeks thereunto allotted.

randis inservit,

sed ut naves ibi tutum receptaculm habeant, & jure debito ac securitate fruantur Navigantes quatenus innocuum iter & stationem querunt. Hinc Portus & Navalia privilegio pacis publice gaudent. Arg. I. Leg. I. S. flationem D. de flum. cap. 2. Jur. Nautic. Sued. c.1. S. I. 4 H. 4. 20.

Members, are those places where anciently a Custom-House hath been kept, and Officers or their Deputies attending, and are lawful places of Exportation or Importation.

Creeks are places where commonly Officers are or have been placed by way of prevention, not out of duty or right of attendance, and are not lawful places of Exportation or Importation without particular Licence or fufferance

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Carlifle

from the Port or Member under which it is placed. Portus eft con-IX. The feveral Ports and Members as now they accius locus quo count at the Custom-House, are, importantur merces & exportantur, l. 59. de Ports. Members. Creeks. verb.Sign.Alias Statio, quod ibi London .-Gravefend. tuto naves fare Leigh. Burnham. poffint, leg. I. Malden. 5. 13. D. de West Mersey. flum. (East Mersey. Ifpwich. Colchefter. Brickley. Wivenhoe. S Maintree.

> Woodbridge. S Orford. Dunwick. Alborough .-Yarmouth. Walder fwich. Sowold -- Lestoffe. Blackney and Cley .- -

Harwich.

Burnham. Wells. (Hitcham. Lynn. Croß Keys. Wisbeech.

Spalding. Fofdick. Wainfleet. Bofton. Numby Chappel. Thetlethorp. Salt-fleet.

Hull.

329

Whitehaven.—

Whitehaven.—

Workington.

Ravinglas.

Milnthorpe.

Chefter.

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Bristol. Pill.

Tophill.

Bridgewater. Minhead.

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Ports.

Culloms.

Members.

Book II.

Ports Creeks.

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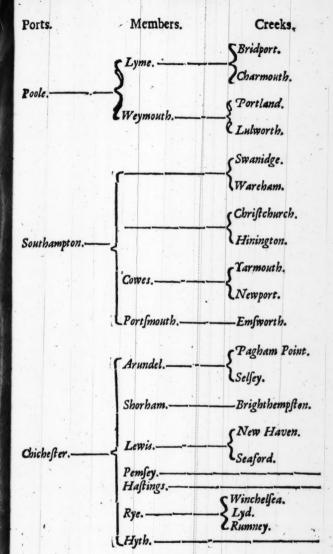
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Paditow .-St. Ives .-Pensance. -Helford.— (Penrin. Falmouth. St. Maures. Plymouth. (Truro. Fowey . . Lowe. . Saltash. Stonehouse. Cowsland. [[Ilfracomb. Clovelly. Appledore.
Biddiford. Barnstable .-Tincomb. Starcroß. Beare and Seaton. Topsham. Pouldram. Exeter .-Sydmouth. Lympson. Exmouth. Aylmouth. C Salt comb. Brixham. -Dartmouth. Torbay.



Ii 3

Sandwich.

Members. Creeks. Ports; Deale. Rumsgate. Marget. Sandwich. Whit stable. Fever ham. Milton. Rochester. ____ Quinborough,

Note, All the Ports and Havens in England are infra Corpus Comit', and that the Court of Admiralty cannot hold Jurisdiction of any thing done in them. Holland's Case, Earl of Exeter, 30 H. 6. And because he held Plea in the Admiralty of a thing done infra Portum de Hull, damages were recovered against him two thousand pounds. Vide Mich. 12 Jac. C. B. Greenway versus Barber, Godbols 260, 261.

Ad Portus in-Caurationem. quia publica utilitatis gratia fit,omnes subditi loci conferre operas debent,

publ. Portus intuitu Auminis quo ambitur, & vectigalis quod ex penditur, eft publicus & bodie Regalibus accenfitur. S. 2.

IX. In regard that the Port of London is of great concern in relation to the Customs, the extent and limits of the fame Port is by the Exchequer fetled, which is declared to extend and be accounted, from the Promontory or Point called North-Foreland in the Isle of Thanet, and from thence Northward in a supposed line to the opposite Prolib.7. C.de oper. montory or Point called the Nafe, beyond the Gunfleet upon the Coast of Essex, and so continued Westward through the River of Thames, and the feveral Chanels, Streams and Rivers falling into it, to London-Bridge, fave the usual and known right, liberty and priviledge to the Ports of zavium flatione Sandwich and Ipswich, and either of them, and the known Members thereof, and of the Customers, Comptrollers, Searchers, and other Deputies of and within the faid Ports of Sandwich and Ipswich, and the several Creeks, Harbours Inft. de rer. dio. l. 4. S. D. de cod. c. un. que funt Rega.

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ing w Port o mitte Good What often Comn tain a fty by fuance be law

Brewe Chefter Wooll * Cuft Hou

or lan

Porter Bear I +Sabb.

Wiggo Toung. Ralphs * Dice

Smart +Some

Lyon. Butoly Hamo * Gan and Havens to them or either of them respectively belong-

ing within the Counties of Kent or Effex.

X. And in regard that when Ships did come up to the Port of London, there used to be very great Frauds committed by a promiscuous kind of shipping and landing of Goods and Merchandizes at feveral blind or unknown Wharfs and Keys, by reason of which his Majesty was often defeated of his Customs, it was provided that a Commission might issue forth out of the Exchequer to ascertain all fuch Wharfs, Keys, or other places as his Majefly by virtue of fuch Commission should appoint, in purfuance of which his Majesty hath been pleased to allow to be lawful Keys, Wharfs, and other places for the lading or landing of Goods,

Brewers Key. * Custom-

Chefters Key. 2* Some Stairs on the West side thereof are declared not to be a place for shipping or House Key. L lading of Goods.

Bear Key. +Sabbs Dock

Porters Key. T Excluding the Stairs there, which are declared no lawful place for shipping, or landing of Goods or Merchandize.

Wiggons Key. Youngs Key. Ralphs Key. * Dice Key.

* The Stairs there declared unlawful for shipping or landing of Goods or Merchandize.

+Somers Key.

Smart Key. The Stairs there declared no lawful place for shipping and landing of Goods and Merchandizes.

Lyon Key. Hamons Key. * Gaunts Key.

Butolph Wharfe. > * The Stairs on the East declared unlawful for shipping or landing of any Goods, GE.

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Cocks

Cocks Key.

One other place betwixt Cock: Key and Fresh Wharfe, called part of Fresh Wharfe, the Stairs are declared to be unlawful for shipping or landing of any Goods, &c.

Fresh Wharfe.

Billingsgate

To be a common open place for the landing or bringing in of Fish, Salt, Victuals, or Fuel of all forts, and all Native Materials for Building, and for Fruit (all manner of Grocery excepted,) and for carrying out of the same, and for no other Wares or Merchandize.

Bridge-House in Southwark

May be allowed a place convenient for landing of any kind of Corn bought or provided for Provision or Victualling of the City of London, and not upon any private or particular persons account, and for no other Goods or Merchandize.

XI. It may be lawful for any person to ship or lade into any Ship or Vessel on the River of Thames bound over Seas, Horses, Coals, Beer, ordinary Stones for Building. Fish taken by any of his Majesties Subjects, Corn or Grain, the Duties being paid, and Cocquets and other lawful Wartant duly passed for the same.

So likewise Deal-boards, Balks, and all sorts of Mass and Great Timber may be unshipt and laid on Land at any place between Lyme-house and Westminster, the Owner first paying or compounding for the Customs, and declaring at what place they will land them before he unships them, and upon Licence had and in the presence of an Officer they may unlade them; otherwise they incur a forfeiture.

CHAP.

Book

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CHAP. XV.

Probisions and Allowances made notwithflanding the leberal Claufes in the Ads for the Cultoms.

I. Custom to be paid for no more | XV. Exercer and other Western toan is landed; and when Bulk shall be broken.

II. Of Goods Imported and Exported, what of the Customs shall be repaid back, and by whom; and of the things requisite in the Same.

III. Of Agreement or Contracts made or to be made for the importing and exporting by way of Composition ratified.

IV. What Allowances to be made to the Exporters of Wines.

V. Of Exporting of Spanish wooll; where the same may be done.

VI. Of Currans Exported, what Allowances shall be made, and to whom, as well to Denizens as Foreigners.

VII. Goods imported not finding Market after a year ; Wine exported discharged of Custom.

VIII. What Allowances are to be made for Leakage.

IX. What shall be accounted Leakage.

X. Wines proving unmerchantable, what allowances to be made.

XI. Tabaccoes receiving detriment or damage in the Importation, what allowances to be made.

XII. Strangers paying double Subfldy, where they shall pay double Custom.

XIII. Of times and places lawful to unlade, and Officers duties then attendant to be prefent.

XIV. York, New-Caftle, and Hull men where Gustom-free, and for what.

men , what free Sublidies hall be allowed in.

XVI. Woollen, whether new or old, what allowances shall be made in Custom or Subsidy.

XVII. Allowances of 5. in the Hundred for all other Goods.

XVIII. The Customers and other Officers Duties in reference to attend their several Duties in the

XIX. Of Officers their Duties , and the punishments where made on complaint.

XX. The several Duties of London how preserved.

XXI. The like for other Cities for those Duties granted or taken for publick good uses.

XXII. Where Ships may be visited and the Officers duty relating to the same.

XXIII. Timber to be rated, and in what manner must pay.

XXIV. Prevention in Extortion of Customers and Officers, and on what pains and penalties.

XXV. Where Fees for Cocquets and Certificates shall be paid altogether, and where he (hall detain his own Cocquet till the Veffel has broke ground.

XXVI. where the (fficers and Cuflomers shall allow and make good to the Merchants the Algier Duty and all other allowances, and no other Imposition or Duty required by the Book of Rates, (hall be requi-XXVII. If red or paid, .

XXVII. If Goods shall happen to be taken by Enemies or Pirates, or wreckt, and what allowances shall XXVIII. Ships of war and other

priviledged-Veffels subject to fearch. XXIX. Of Allowances to be made, and of shipping out lesser quantities than are contained in the Certificate, what operation the same

Vide Cap. 14. what are lawful places of landing.

I. Very Merchant shall have free liberty to break Bulk in any Port allowed by Law, and to pay Custom and Sublidy for no more than he shall enter and land; Provided that the Master or Purser of every such Ship shall first make declaration upon Oath before any two Principal Officers of the Port of the true contents of his Ships lading, and shall likewise after declare upon his Oath, before the Customer, Collector, Comptroller, Surveyor, or any two of them at the next Port of this Kingdom where his Ship shall arrive, the Quantity and Quality of the Goods landed at the other Port where Bulk was first broken, and to whom they did belong.

A Merchant brought eighty Tun of Bay-Salt by Sea to a Port in England, and out of that Ship fold twenty Tun, and discharged the same into another Ship then riding at the same Port, but the twenty Tun were never actually put on shore, and for the rest, being fixty Tun, the Master agreed for the Customs and put them on land; and although that that twenty Tun was always water-born, and never were put on shore, yet adjudged they ought to pay; the reason was, for the discharging them out of the Ship, amounts as much as to the laying them on Land, the same bring done in Port; for otherwise the King would meerly be defrauded. But if a Ship is carried in by storm, and to preserve the Vessel part is landed before the Duty paid, yet this will not subject the same to a forfeiture.

Coke 12. part, fol. 17, 18.

Fogaffaes Cafe. Plowden. Com. fol. 9.

II. All Foreign Goods and Merchandizes (except Wines, Currants, and wrought Silks) first Imported, shall be again Exported by any English Merchant within twelve months, and fuch Merchant or Merchants as shall Export any fuch Foreign Goods or Merchandizes (except as before is excepted) shall have allowance and be repaid by the Officer which received the same, the one moity of the Subsidy which was paid at the first importation of such Goods or Merchandizes, or any part thereof, fo as due proof be first made by Certificate from the Officers of the Book due E

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due Entry and payment of the Custom and Subsidy of all such Foreign Goods and Merchandizes inwards with the Oath of the Merchants importing the same, affirming the truth thereof, and the name of his Majesties Searcher, or Under-Searcher in the Port of London, and of the Searcher of any other the Out-Ports, testifying the shipping thereof to be Exported; after all which duly performed in manner before expressed, the moity of the Subsidy sirst paid inwards, shall without any delay or reward be repaid unto such Merchant or Merchants who do export such Goods and Merchandizes, within one month after demand thereof, as also the whole additional Duty of Silk, Linen, and Tabacco, as before is directed.

If the Officer shall refuse to pay, (admitting there was no Relief had by way of complaint) whether the Mer. I H. 7. chant Exporter may not bring an Action against him up. * Hobart 279. on the Debt created in Law, as he that hath a Tally may Rolls Abridg.

do *.

III. And if there be any Agreement now in force, which was formerly made by the late Commissioners of the Cufloms and Subfidies, with the Merchants Strangers or their Factors, or shall hereafter be made by any Commisfioners or Farmers of the Customs and Subsidies, or any other power (except by confent of Parliament) with any Merchant or Merchants Strangers or Factors for any Foreign Goods and Merchandizes, to be brought into the Port of London, or any other Port or Haven of this Kingdom of England, or Principality of Wales, and to be Exported again by way of Composition; all other Merchants being his Majesties Subjects shall be admitted into the fame Composition, and not be excluded from any other priviledge whatfoever granted to the stranger by any private agreement or composition, under the same condition and with the same restriction as shall be made with the Merchant Stranger.

IV. Every Merchant as well English as Stranger that shall ship and export any kind of Wines which formerly have paid all the Duties of Tunnage inwards, shall have paid and allowed unto them all the Duties of Tunnage paid inward, except to the Englishman 20s. per Tun, and the Stranger 25s. per Tun, upon due proof of the due Entry and payment of Tunnage inwards and of the shipping

thereof

thereof to be Exported to be made as above.

12 Car. 2. C. 32. 14 C4r.2. c. 18.

in B. R.

V. If any Merchant, Denizen or Stranger shall Export any Spanish or Foreign Wooll, he shall have liberty so to do with this further condition, That fuch Spanish or other Foreign Woolls what foever be not Exported in any other Ship or Vessel whatsoever, with intent to be arrived be. yond the Seas out of the Kingdom of England and Dominion of Wales, than only in English Shipping, upon pain of Confiscation.

VI. Every Merchant, as well English as Stranger, which shall ship or Export any Currans which formerly were duly entred, and paid the Subfidy and Custom inwards, shall have allowed and repaid unto them respectively all the Cultom and Sublidy paid inwards for the fame, except 1 s. 6 d. for every Hundred weight to the English, and 1 s. 8 d. and one half penny for every Hundred weight to the Stranger, upon due proof of the due Entry and payment of the Custom and Subsidy thereof inwards, and of the fnipping thereof to be Exported to be made as in the fecond Article.

VII. If any Merchant having duly paid all Duties inwards for Foreign Goods, and in regard of bad fales shall be enforced to keep the same or any part thereof in his hands after the space of a year shall be elapsed; in this case he or any other person is to be permitted to ship the fame out for parts beyond the Seas, if they think fit, without payment for any Subfidy for the fame outwards, upon due proof that the same was duly entred, and Subsidy paid inward.

VIII. Every Merchant bringing in any fort of Wines into this Kingdom by way of Merchandize, and shall make due Entries of the same in the Custom-house, shall be allowed 12 per Cent. for Leakage.

IX. Every Hogshead of Wine which shall be run out and not full feven inches, shall be accounted for outs, and the Merchant to pay no Sublidy for the same.

And by some is conceived that no Freight shall be paid Boyce vers' Cole for the fame, but the Merchant may fling them up to the fen. & Cole jun. Master for Freight, but that should feem hard, for non con-Hill. 27 Car. 2. fat any fault in the Malter, but the same may be in the Cask, or in the ill stowing (the Master by custom having no charge of the stowing of Wines, especially French, but the fa when pty or Wine feem h amour

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XI.

broug falt wa prejud cers of the Co power the va Goods Oaths: fuch G value; Rates f to mal or Own XII.

rates a Rates, Cloth, ctures c other C the Sub any oth Sublidy

XIII. London at any l Goods and bet day of S

the fame belongs to certain Officers beyond Seas from whence they are imported) besides the Goods, be they empty or full, take up Tunnage in his Ship, and should all the Wines on ship-board have the same misfortune, it would feem hard; however, it is pity opinion in this case should amount to a laudable custom.

X. If any Wines shall prove corrupt and unmerchantable, and fit for nothing but to distil into hot Waters, or to make Vinegar, then every Owner of fuch Wines shall be abated in the Sublidy according to fuch his damages in those Wines by the discretion of the Collectors of the Cu-

stoms and one of the Principal Officers.

XI. If any Tabacco or other Goods or Merchandize brought into this Kingdom shall receive any damage by falt water or otherwise, so that the Owner thereof shall be prejudiced in the fale of fuch Goods, the principal Officers of the Cultom-house, or any two of them, whereof the Collector for the time being to be one, shall have There is a power to chuse two indifferent Merchants experienced in Book at the the values of fuch Goods, who upon visiting of fuch custom-house, in Goods, shall certifie and declare upon their Corporal which there is Oaths first administred by the said Officers, what damage a general vafuch Goods have received, and are lessened in their true lue set on all value; and according to fuch damage in relation to the which Tabac-Rates fet on them in the Book of Values, the Officers are co is there vato make a proportionable abatement unto the Merchant lued. or Owner of the Subfidy due for the fame.

XII. All Merchants Strangers who according to the Nor can fuch rates and values fet in the general Book of Values and Merchants Rates, and do pay double Sublidy for Lead, Tin, Woollen Strangers land their Goods Cloth, shall also pay double Custom for Native Manufa- before they ctures of Wooll; and the faid Strangers are to pay for all have agreed other Goods as well inwards as outwards, rated to pay for the Cuthe Subfidy of Poundage, three pence in the pound, or floms, notwithany other Duty payable by Charta Mercatoria, besides the ta Mercatoria.

Sublidy.

XIII. That the Merchants Trading into the Port of London have free liberty to lade and unlade their Goods at any lawful Keys and places of shipping * and lading of Goods between the Tower of London and London-Bridge, cap. 14. S. 10. and between Sun-rising and Sun setting from the Tenth day of September to the Tenth day of March; and between

the hours of Six of the Clock in the Morning, and fix of the Clock in the Evening, from the Tenth day of March to the Tenth of September, giving notice thereof to the refpective Officers appointed to attend the lading and unlading of Goods; and such Officer as shall refuse upon due calling to be present, he shall forfeit for every default 5 the one moity to the King, the other to the party a grieved, he suing for the same.

XIV. The Merchants of York, Kingston upon Hull, and New-Cast le upon Tyne, and the Members thereof, shall be allowed free Custom and Subsidy two of the Northern Clothes and Kersies in ten to be shipped in those Ports in the name of Double Wrappers, as formerly has been there

allowed them.

XV. The Merchants of Exeter and other Western parts shall be allowed free of Subsidies one Perpetanae in Ten for a Wrapper, and three Devons Dozens in Twenty for Wrappers, the same to be shipped out of the Ports of Exeter, Plymouth, Dartmouth, Barnstable, Lyme Regis, or the Members thereof.

Now, That all these several allowances are not by Act of Parliament, but purely his Majesties gracious and voluntary gift and benignity towards the encourageing the Merchants and Trade.

Now, That all XVI. All whether new shell be allow and Subfidy.

XVII. Evidence and substitute of Pound in the Merchants and Trade.

More, That all XVI. All Merchants transporting any fort of Woollin, the eleveralal-lowances are shall be allowed one in ten for a Wrapper free of Custom and Subsider

purely his Mapurely his Majefties gracious Goods and Merchandize appointed to pay to any the Suband voluntary fidy of Poundage according to the Rate in the Book of Vagift and beniglues, to be imported, 5. in the Hundred of all the faid Sub-

the encourage. sidies of Poundage so appointed to be paid.

XVIII. The Officers who sit above in the Custom-house of the Port of London, shall attend the service of their several places from nine to twelve of the Forenoon, and one Officer or one able Clerk shall attend with the Book in the Afternoon during such time as the Officers are appointed to wait at the Waters side, for the better deciding of all Controversies that may happen concerning Merchants Warrants, all other the Officers of the Out-Ports shall attend every day in the Custom-house of every respective Port for dispatch of Merchants and Ships, between the hours of nine and twelve; and two and four in the Afternoon.

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XIX. Every Merchant making an Entry of Goods either inwards or outwards, shall be dispatched in such order as he cometh; and if any Officer or his Clerk, shall either for favour or reward put any Merchant or his Servant duly attending and making his Entries as aforesaid, to draw any other Reward or Gratuity from him than is limited in the Act of Tunnage and Poundage, and the general Book of Values, if the Master Officer be found faulty herein, he shall upon complaint to the Chief Officers of the Custom-house be strictly admonished of his Duty; but if the Clerk be found faulty therein, he shall upon complaint to the said chief Officers be presently discharged of his Service, and not permitted to sit any more in the Custom-house.

XX. The Lord Mayor, Commonalty and Citizens of the City of London, their Officers or Deputies for and touching Offices of Package, Scavage, Baleage or Portage of any Goods or Merchandize of Aliens, or their Sons born within this Kingdom or unfreemen, Imported or Exported into or out of the City of London or the Liberties or Ports thereof unto or from the parts beyond the Seas, for or concerning the receiving or taking of any Fee or Rates heretofore usually taken, for or in respect of the said Offices, or any of them might and may receive and take the same, any thing in the ACT of Tunnage and Poundage, or any other Act or thing to the contrary notwithstanding.

XXI. All ancient Duties heretofore lawfully taken by any City or Town Corporate their Farmers, Deputies or Officers, under the name of Town-Custom, or the like, for the maintenance of Bridges, Keys, Harbours, Wharfs, or the like, shall and may be received and enjoyed as formerly, any thing in the said Act, or any other Act to the

contrary in any wife non obstante.

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XXII. The Under-Searcher or other Officers of Gravefend have power to vifit and fearch any Ship outward bound, but shall not without just and reasonable cause detain any Ship under colour of searching the Goods therein laden above three Tides after her arrival at Gravesend, under pain of loss of their Office, and rendring damage to the Merchant and Owner of the Ship, and the Searcher or Officer of the Custom-house in any of the out-Ports having

power to fearch and visit any Ship outward bound, shall not without just and reasonable cause detain such Ship under colour of fearthing the Goods therein laden above one Tide after the faid Ship is fully laden and ready to fet fail, under pain of loss of the Office of fuch offender, and rendring damage to the Merchant and Owner of the Ship.

XXIII. All Timber in balks which shall be of 8 inches fquare or upwards that shall be imported or brought from any part beyond the Seas into the Realm of England, Dominion of Wales, Port and Town of Berwick, or any of them, shall be rated according to the measure of Timber the foot square 3 d. for the value thereof, and according to that rate shall pay for Subsidy 12 d. in the pound according to Poundage; and all under 8 inches square, and above sinches square, shall pay for Subsidy according to the rates mentioned in the Book of Rates for middle Balks, and all of s inches square or under shall pay accord ing to the rate of small Balks.

XXIV. For avoiding of all oppressions by any the Officers of the Customs in any Port of this Kingdom, in exacting unreasonable Fees from the Merchant by reason of any Entries or otherwise touching the shipping or unshipping of any Goods, Wares or Merchandize, it is ordered, That no Officer, Clerk or other belonging to any Custom house whatfoever, shall exact, require or receive any other or greater Fees of any Merchant or other whatfoever, than fuch as are or shall be established by the Commons in Parliament affembled; and if any Officer or other offend contrary to this Order, he shall forfeit his office and place, and be for ever after uncapable of any office in the Custom-

XXV. All Fees appointed to be paid unto the Customer, Comptroller, Surveyor, or Surveyor General in the Port of London, for any Cocquets or Certificate outwards, shall be paid altogether in one fumm to that Officer from whom the Merchant is to have his Cocquet or Certificate above in the Custom-house; and after the Merchant hath duly paid his Custom and Subsidy and other Duties above in the Cultom-house, as is appointed above by the Book of Rates, he is to be mafter of and keep his own Cocquet or Certificate until he shall ship out his Goods fo entred whenas

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Good without Propriet only forf whenas he is to deliver the same to the Head Searcher, or his Majesties Under-Searcher in the Port of London or other Ports, together with the mark and number of his Goods.

XXVI. The Officers of the Custom-house for the time being shall allow and make unto all persons all such Monies as are or shall be due unto them for the half Subsidy, and also the Algier Duty of Foreign Goods formerly Exported

now due and unpaid.

The Duties and Sums of Money appointed to be paid by the Act of Tunnage and Poundage passed this Parliament, and by the Book of Rates therein mentioned, and no other shall be paid to his Majesties Officers during the continuance of the said Act upon Goods imported and exported, by Law, Statute or Usage to the contrary notwithstanding. Nevertheless the duty of Prizage and Butlerage, and the duty of 12 d. of every Chaldron of Sea-Coal exported from Newcastle upon Tyne to any other Port or Ports of this Realm, shall be continued.

XXVII. If any Merchant Denizen born shall happen to 27 Ed. 3. cap, have his Goods and Merchandize taken by Enemies or 13. 12 Car. 2. Pirates at Sea, or perished in any Ship or Ships, the Du cap. 4. ties being either paid or agreed for, upon due proof thereof, may ship out of the same Port the like quantity as shall amount unto the Custom without paying of any thing for

the fame.

If the Importer shall pay ready money, he shall be allowed

10 per Cent. for so much as he shall pay down.

XXVIII. Ships of War may be entred and fearched for 14 Car. 2. 6.11. prohibited and uncustomed Goods, and to bring them ashore to the Kings Ware-houses, and the Commissioners or Head-Officers may leave aboard Officers to look after them, that none be unladen or imbezelled, on pain of forseiture of 100 l. And if Goods are concealed on ship-board after such time as the Ship is cleared, to forseit 100 l. and then any with a Writ of Assistance out of the Court of Exchequer to go in the day time to any place, and enter and seize.

Goods conveyed fecretly into Ships and carried away without paying the Subfidy and Duties, the Owners and Proprietors forfeit the double value, except Coals, which

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only forfeit the double Custom and Duty.

XXIX. There

XXIX. There are allowances to be given Merchants for defective and damaged Goods of 5 per Cent. on all Goods imported, and 12 per Cent. on all Wines to be allowed up on Debentures; but if they shall ship out less than is in the Certificate, then the Goods therein mentioned, or the value thereof shall be forseited, and the Owner or Mer. chant shall lose the benefit of receiving back any of the Subsidy: and Goods shipped out are not to be landed again in England, on pain of forseiture of those Goods.

All Goods coming out of or carried into Scotland by Land, shall pass through Berwick or Carlisle, and pay Cu.

stoms as others, on pain of forfeiture.

And although that by this Act there are many allowances to be made, especially Merchants Denizens, yet the Parliament have ever been fo careful as to bound the fame, that is, it shall be such who traffick in Ships; (which are indeed the Bulwark of this Isle) and therefore if such Mer. chandize shall be transported out in any Galley or Carack, they are obliged to pay all manner of Customs, and all manner of Subfidies, as any Alien; but in regard that Herring and Fish are, and have been accounted one of the principal Commodities, and generally finds a vent or Market in those Kingdoms and Countries that usually imploy fuch fort of Vessels, those Commodities may be transported in them as well as Ships from any Port or Harbour within this Realm, without paying any Subfidy or Poundage for the same; but then such Fish must be taken by the Natives of the Kingdom, and transported by them, otherwife to pay as Aliens.

And whereas all manner of Woollen Clothes, as well white as coloured, unrowed, unbarbed, and unfhorn, and not fully dreffed, are prohibited by Law to be transported. His Majesty was graciously pleased to grant * unto Frances Countess of Portland as well for her Alliance in blood, as also for the many Crosses and Calamities which she hath suffered by the loss and death of her nearest Relations, in his Majesty and his Royal Fathers Service, sull power for one and thirty years, to license the transporting of such Goods, non obstante such prohibitory Laws, the which is now put in Execution by agreement, and Composition of the contract of the contract

fition with her Deputies at the Custom-house.

* Per Letters
Patents bearing
Date 24. of
Feb. 27 Car. 2.

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CHAP. XVI.

Of the Right of Passage, of imposing on the Werlong and Gods of Strangers for pattage through the Seas.

1. Of the Right of harmles Utility excepted tacitly in the primitive dominion of things.

II. Where Paffage ought to be open, and where the same might be implicitly provided for in the first institution of Property, and under what Cautions.

III. Of the same right in reference to

Goods and Merchandize.

IV. If Paffage admitted, whether Tribute or Toll may be imposed.

V. Where Imposition may lawfully be laid, and for what causes; and of the Kings Prerogative in that point.

VI. Whether lawful to flay in others Country, and to build for a feafon.

I. T Aving in the foregoing three Chapters observed I somewhat of sustains and Impositions laid de facto within the Realm, and that by Acts of Parliament, or the consent of the three Estates, it may not seem amiss to inquire what Impolition the King of his Prerogative may impose on Strangers and their Goods passing through his Territories and Seas; and in that to inquire of the same in reference to Perfons and Goods,

Besides the right of necessity which seems to be excepted in the first Institution of Dominion, there is another Relique of old Communion, namely, the Right of harmless Utility: For why should not one (faith Cicero) when cic de Offic. to without his own detriment he may communicate to another in those things that are profitable to the Receiver, and to the Giver not chargeable. Therefore Seneca faith, It cannot Sen. de Benefit. be called a benefit to give leave to another to light his fire by Symp. 7. yours. We read in Plutarch, it is not lawful to spoil our Victuals when we have more than enough, nor to stop nor hide a Fountain when we have drunk our fill; nor to abolish the Way-marks either by Sea or Land which have been useful to us: So a River as a River is proper to that Prince or that Lord, or that People within whose Domion or Royalty it runs, and they may make a Mill on it, Lee quedam D. (unless it be common as a High-way) and may take what de rer. divis.

Fish the River yields, but the same River as a running water remained common as to drinking or drawing of it, notwithstanding as to the Fishing, and the like, it may

be peculiar.

II. Again, Lands, Rivers, nay if any part of the Sea be come into the Dominion or Property of any People, it ought to be open to those that have need of passage for just causes, namely, being expelled by force out of their own Country they feek void places, or because they delire Commerce with remote Nations: The reason here is the fame which hath been mentioned * elsewhere, because Dominion might be introduced with a reception of fuch

use + which profits these, and hurts not those; and there-

fore the Authors of Dominion are to be fupposed willing

rather to have it so, than that such a restriction which

perhaps in the end may destroy Society: however this

Bald. 3. conf. 293. * Lib. 1. cap. 1.

+ S. 3. 6 4. Serv.ad 7. En. littufq; rogamus innocuum, cujus vindicatio, ait, mulli poffit nocere.

Plutarch re-

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hath its quantum; for though harmless passage may be excepted in the first Institution of Dominion, yet that is to be understood when leave is granted: and though fear of the multitude which is to pass, cannot take away that Prince his Right through whose Territories or Seas they go; yet it follows as naturally that in the Institution of lates, That Cyfuch liberty that Prince or People may provide, and if aid the Lacedethey have any probable or any reasonable cause interdia their passage till security or Hostages are pledged for their corinth, being peaceable passage, nay without declaring their reason may interdict them absolutely any manner of passage, if there be any other way to pass in safety; and therefore at this thians for not day by the Laws of England*, the King may interdict any asking leave of Nation or People what foever to pass through his Seas withthe City: Nam er qui fores aout leave first obtained to that purpose, and may visit all Ships, be they of War or of Traffick that shall occur or be in the same.

domini permifsu: ac vos, inquit, Cleoneorum & Megarensium fores non pulsastis sed per fregistis, censentes omnia patere debere plus valentibus. However passage is and must be requested; but in lieu of that, the striking of the Flag, and lowring the Top fail is in token of that Right due to His Majesty in the British Seas. * Vide lib. 1. cap. 4. Vide Mr. Selden Matt Clausum.

III. Nor is passage only due to persons, but to Merchan-†Thatis, by the dize also; for no man hath Right † wilfully to obstruct Laws of Nathe way of Commerce to any Nation with any other that is ture, but the Laws of Nati- remote, because the permission of Trade is for the interest ous and these of Countries may.

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of humane Society, and is not discommodious to any one, and to that purpose Philo speaks: On the Sea all Ships of Philo in Legat. burden safely pass according to that Right of Commerce which Cajum. is between all Nations arising from the desire of natural Society, while they supply one another mutually with what the one want- Quomodo autem eth, and the other can spare; for envy hath never invaded either explicit facilithe whole World, or the greater parts thereof. And Plutarch tatem ad mutua speaking thus of the Sea: This Element hath made our life commercianobis sociable and perfect, that otherwise would be wild and without datam? Ne enim correspondence; it supplies our wants with mutual aid, and do impedimenby exchange of things needful, it procures fellowship and friend- tum alionum ad ihip. And the wisdom of God is highly to be admired, alsos commeanwho hath not granted all things to every Land, but hath tibus adferret, distributed his gifts to several Countries, that men having breviorem vineed of one another, might maintain Society for their cet, ubiq; terracommon good; therefore hath he endowed Man with rum diffosuit knowledge and understanding to invent and build Ships, Deus, ad munto govern and guide them by those Lamps of Heaven and dum tanquame other Instruments of his Divine Wisdom, enabling there-communiter inby the Merchant to convey to all what any place affords: habitantes creaccording to that of the Poet,

> What Nature any Land denied, By Navigation is supplied.

vicissim, commode acciperet res apud illum abundantes ; ac sic exiguam tenens terra partem, ita tanquam si teneret universam, frueretur eis que orbis sunt bonis. Licet itaque; tunc tanquam in communi menja convivarum unicuiq; ea que sibi opposita dare alteri longius accumbenti, as contra que apud ipsum sunt accipere manu tantum extenta.

But as the Sea is free and open for Traders, yet nevertheless the Passengers are subject to such Restrictions, Laws and Ordinances as those Soveraign Princes shall make of force in those places where they have an accession of Property or Soveraignty.

IV. But admitting that fuch free passage may be granted, as above, whether Tribute may be imposed by him that rules the Land, upon Merchandize passing by Land or by River, or by part of the Sea, which may be called an Accession of the Land, (that is, the place through which they pass, is as much under the absolute Jurisdiction of the Prince, as the very Land it felf) certainly whatfoever Burdens have no relation to the Merchandize, no equity

bro nos invicem inviferimus; O apud se nata quisque alteri communicans

* 13 H. 4. fol.

+ Lib.s. fol.63.

Case of the

Chamberlain of London.

Vide the Plea

of the Venetian

den's Mare

Fure Fisci,

Clausum.

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Vide Strabo, lib. fuffers the same to be imposed on the same; neither can 8. 6 lib. 16. Poll-money put on the Inhabitants to fustain the Charge of

the Commonwealth, be exacted of Passengers.

V. Nevertheless, if either to secure the Passengers Goods and Vessels from Pirates and others, or for the Erecting of Beacons, Light-houses, and other Sea-marks, and such like, * there indeed some compensation may be laid upon the Commodities or Ships passing through, so that the measure of the cause be not exceeded; or as my Lord Coke observes in the case of the Halage-money, + it be reasonable; for upon that depends the justness of Tributes and Toll: And upon those reasons the Venetian in the Adriatick, the King of Denmark in the Baltick Sea does demand the same; and the King of England may do the like in the Lawyers at the Chambers of his Empire, and that by his Prerogative; for end of Mr. Sel- the fame is not fo much compulfory to any to pay, but to

> them that will take benefit of fuch accommodation. Les Comons prajont que lon le Kop les Progenitors do long temps baut eftre Beigneur de Der, a oze eft benus que le Kop Seigneur des Colts de ambideur partes del Wer, a par ceo praiont le Kop de imposer un imposis

tion fur Estrangers passant purmy la mer.

Strabo relates, That the Corinthians even from the most Pereg. lib. 1. de ancient of times received Tribute of the Commodities, which to avoid the compassing of Malta were carried by 64P. I. num. 22. Land from Sea to Sea. So the Romans received a price for the passage of the Rhyne. But this Right of imposing on Ships and Goods passing through some Territories is found cruel, especially when they must pass through the Territories of a powerful and fierce People, then it is heavy to the Merchant to compound, for it's often done on hard

and grievous terms.

VI. Again, to stay fome time for health fake, or for any other just cause, ought also to be permitted to Passengers, for this too is among the innoxious utility; wherefore Illoneus in Virgil *, when the Trojans were prohibited to stay on the shore of Africk, is bold to invoke the Gods as Judges: and the complaint of the Megarenses against the Athenians, who drave them from their Havens † against common right, was approved by the Greeks; fo that the Lacedemonians esteemed no cause to create a War more just: hence it is, that at this day it is held by all Lawyers, That

* Servius ad eum loc.

+ Plutarch Pericle.

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That it is lawful (either in cases of Wreck, or any other exigency upon fuch landing) for Passengers to build a Cottage or Hut on the shore to shelter them for a scason, though we grant the shore to be possest by the Inhabi- Occupantis enim tants: 'Tis true, Pomponius does think there ought to be toris, unde offenthe Prætors Decree; but certainly that extends only to duntur crudiles those Passengers that, being expulsed their own Coun quietiam à comtries, desire perpetual habitation, and a subjection to the munibus prohi-Government of the place where they defire to dwell.

The End of the Second Book.

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BOOK III.

CHAP. I.

Df fredom, Bondage, Slabery, Exile. and Abjuration.

I. Of Freedom by the Law of Nature, and of Bondage, Slavery, or Captivity introduced by the Law of Nations.

II. Of the Actions that Subject Man to Bondage.

III. Of the Dominion over Slaves, Bond-men and Captives.

IV. Of the Cause, or Reason of such Dominion.

V. That this Right or Dominion was not a Law universal.

VI. Of Bondage or Slavery, where discontinued by the Christians and Mahometans.

VII. Of a Servitude at this day, standing with the Laws of a Chri-Rian Commonwealth.

VIII. Of Manumission and Freedom by the Hebrew and Roman Law. and by the Laws of England.

IX. Of Disfranchifing the several ways.

X. Of Abjuration and Exile, and what operation it hath.

XI. Of Freedom in Cities and Corporations, in reference to Merchants, Traders and Foreigners.

N the primitive state of Nature, no men were Ser- L. libert. S. I. D. vants; yet it is not repugnant to natural Justice, de statu bomithat by the Fact of man, that is, by Covenant or num. Fiunt eti-Transgression, servitude should come in; therefore servi- am servi liberitude is brought in by the Laws of Nations.

II. Hence it is, That those that will yield up their per- gentium. Brafons, or promise servitude, are accounted Slaves; so like- cton l.1. c.6. wise all that are taken in Publick War, and brought within Littleton \$.175. the Guards of their Conquerors; nor is transgression ne. 1. Possiim. S. 1. ceffary, but the Lot of all is equal after the War is begun, D. de Captiv. even those whose ill fortune subjected them to be deprehended within the Enemies bounds; nor are they fervants only themselves, but all their posterity for ever.

III. The Priviledges of this Right or Dominion are infi-

vitate de jure

nite; since there is no suffering which may not be imposed on S. I. D. de statu hominum. Apud omnes perag; gentes, ait Caius, animadvertere possumus dominis in servos vita necifq; potestatem fuiffe. Co. Instit. fol. 116. b. l. 1. D. de bis qui fui funt juris.

-Of fredom, Bondage, Slabery,&c. Book III.

such, nor work which may not every way be extorted from them: So that even the Cruelty of Masters became almost unpunished, till the Municipal Laws of Countries set bounds to their rigour and power.

Nor are the persons become theirs only that have the power of them, but also all that they have; for such un-

happy persons can have nothing of their own.

Leg. Cornel. ff. de Testam. & Leg. Cornel. ff. de vulg. Substit.

Hence it was, That that excellent Law in favour of fuch, was introduced by the Romans, called Lex Cornelia, which was when a Captive, intra prasidia hostium, dyed in his Captivity; if he had made a Will, before his being taken Captive; yet such a Captive should in favour of such Will, and for the upholding of the fame, be feigned to be dead, and in puncto temporis, immediately before fuch his being taken Captive; and fo by that Legal Fiction of death, his Will became firm and valid, as if he had really

In jure Postliminii Leg. retor. & l. in bello S. Capt. & S.4. D. quibus mod. jus patr. folvit.

dyed without ever being taken by the Enemy. So likewife if one had been made a Slave; yet if he had returned out 1.6 l.bon.ff.de of his Captivity, that for the preservation of his Right and Propriety, he was feigned as if he had never been ab. fent, and was immediately redintegrated into his pristing state and condition.

IV. Now all these Priviledges and Immunities were in-And Fortescue troduced by the Laws of Nations, for no other reason, but conceives, it began ab homi- that their Captors, tempted by fo many Immunities, might ne, & pro vita willingly abstain from that cruel rigour of slaying their Pri-

Servitus, E. fed Soner. introducta est. libertas à Deo psa ab homine

Hence it is, That the Captors Dominion is extended to hominis indica the Children; for should such use their highest Right, they natura, quare i- would not be born; but Children that are born before that calamity, and were never taken Prisoners, are freed from redire glifeit, at that unhappy flate.

faciat omne quo libertate naturali privatur, cap. 42.

V. Though this Dominion or Right was generally ac quired in most Nations, yet was not the same an universal Law; for amongst the Jews, refuge was granted to Servants who fell into that calamity by no fault of their own. And the state of Christendom at this day is apparent, That Prisoners taken in War do not become perfect slaves, as of old, but only remain in the custody of the Captor, till Ransoms are paid, whose valuations are generally at the pleasure

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pleasure of the Conqueror; yet persons of Eminent Quality, as Generals, and the like, fuch persons, * if taken by * Articof War a common Souldier, yet he has no advantage by the same; for his Majefor fuch a Captive is become Prisoner immediately to that flies Forces Prince or State under whom the Captor ferved: But if it Artic. 24. be the lot of an inferiour Souldier to become a Prisoner of War, he is then become absolutely the Captors to dispose of; but he wanting those necessaries in the Field for him-Bart. in l. nam. felf, which he ought to provide for his Priloner, common- rebus gelfis. ly waves that interest, and generally yields him up as a Prisoner of War to be disposed of by that Prince or State

under whom he ferves. VI. Slavery in Christendem is now become obsolete; and in these latter Ages the minds of Princes and States having as it were univerfally agreed to effeem the words Slave, Bondman, or Villain, barbarous, and not to be used; and that fuch as are taken in War between Christian Princes, In the Wars of should not become Servants, nor be fold, or forced to work, the French with or otherwise subjected to such servile things, but remain till the Spaniards an exchange of Prisoners happen, or a Ransom paid, as initaly, a Horseafore: Nay, the very Turks and Mahometans at this day man was rangenerally observe this among themselves, not to make somed for the Slaves of those of the Mahometan Religion, though taken in ly Pay. Vide War; and that which is most to be admired, a Christian Mariana, 1.27. fallen into that miserable state, renouncing his Religion, 6.18. And in and becoming a Mahometan, immediately upon his Cir- the last Belgick cumcifion obtains his Freedom with a recompence. The war, the Eng-Cruelty of those Infidels to those unhappy persons, toge- the Flemings ther with the reward of renouncing, hath given cause to that were ta-

4th of his yearmany a brave person to become Renegado; the which be- ken in War, as ing confidered by the Parliament of England, they made a they did the provision for such miserable persons as should be taken of England, Anno 1671

by Turkish and Moorish Pirates. Quam non sit ardua virtus servitium sugisse monu, it is none of the hardest Vertues to embrace Death to avoid Slavery. † 16, 17 car. 2. cap. 24. it's expired; but His Majefty is yet gracioully pleafed to confider the state of his poor Subjects, and thereupon hath appointed a Committee of the Lords of the Privy Council, for the managing of that Affair.

VII. Though Slavery and Bondage are now become difcontinued in most parts of Christendom, and to that degree, that for the person of a man, be he More or other Indian, a Trover is not maintainable by the Laws of England; yet

Ada Z

Diffredom, Bondage, Slavery, &c. Book III.

" The English l-lercliants, and others, at the Canaries, do here support this unnatural Cuftom: So likewife at Virginia, and other Plantati-

Exod. 21. 26, 27.

Vide the Stawho hath provided the like ther places.

Deut. 15. 13.

The Russians having feized on the Counery of Illyria, and made it their own by Victory pleafed them fo highly, that

there may be a servitude which may amount to a labour or fuffering equal to that of Captives, the which may be justifiable; for men either through poverty, and the * like, may oblige themselves by Contract for maintenance to a fervitude that's perpetual, i.e. for life, and fo for years; but at this day there is no Contract of the Ancestor can oblige his Posterity to an hereditary service; nor can such as accept those Servants, exercise the ancient Right or Dominion over them, no nor fo much as to use an extraordinary rigour, without subjecting themselves to the Law. If an Eye or a Tooth had been struck out injuriously, by the Hebrew Law Freedom was immediately due; and by the Greeks, if Servants had been ill treated, it was lawful for them to demand a fale of themselves to others. At Rome the Statues became Sanctuaries for Servants to implore the help of the Governours against rigour, hunger, or any other intolerable injury inflicted by their Masters; and even in London at this day in fervitude (amongst the many causes, ture of 5 Elize as not Inrollment of the Indentures, not instructing in the Art, want of necessaries, infra etatem 14, &c.) Cruelty, remedy in o. Hunger, Rigour, immoderate Correction, and the like, are causes sufficient on a Monstrance or Petition to the Lord Mayor and Aldermen to dissolve the Contract, though under Hand and Seal, and to decree all or part of the Dowry, or some given (if any) to the Servant; and if cruelty hath been in the case, to expose the Master'to

VIII. Ulpianus observes after, That by the Laws of Na. tions Servitude came in, then followed the benefit of Manumillion. By the Hebrew Law, after the expiration of the time agreed on, the Servant was to be manumitted, and that not without Gifts, like Londons Freedom; by the Cultom of which the Master is always at the charge of Cloathing, and discharging the Chamberlains Fees. By the Roman Law, every Son was in such subjection to his Conquest, their Father, that before he could be released of this subjection, and made Free, he should by an imaginary fale be sold three times by his natural Father to another man, who

answer damage to the party Servant.

thereupon they called themselves by a new name, Slave, which is in their Language Glations; but in after-time, (that warmer Climate having thawed their Northern hardness, and not ripened their Wits) when they were conquered, the Italians in derifion call them (being then their Bond-men) Slaves. Sir Walter Ramleigh, lib. 2. cap. 17. S. 8.

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was called by the Lawyers Pater Fiduciarius, that is, a Father in Trust, and then be bought again by his natural Father, and so manumissed by him, and then he became Free: This Form of setting Free was by them called Emancipatio, Frædom.

That Roman Darling was to be obtained three ways: 1. By Birth, both, or at least one of their Parents Tibul. Signal's

being Free; and fuch were called Cives Originarii.

2. By Gift and Cooptation, when the Freedom was be- lib.1.tit.da. stowed on any Stranger or Nation, and then they were gen. Vid. France. termed Civitate Donati: And fo we read, that Cafar took Silo in Caille in whole Nations into the Freedom.

Lastly, By Manussian, which was thus: whenas the Servant was presented by his Master before the Conful or Prator; the Malter laying his hand upon his Servants head, used this form of words, Hunc liberum effe volo; and with that turning his Servant round, and giving him a Cuff on the Ear, he did emittere fervum e manu : The Pra- Goodwyn detor laying then a certain Wand or Rod, called Vindicta, tig. Ros. 4. upon the Servants head, replied in this manner, Dico eum 33, 34liberum effe more Queritum; then the Listor or Serieant taking the Wand, did strike the Servant on the head, and with his hand he struck him on the face, and gave him a push on the back; and after this he was Registred for a Free-man. This being performed, the Servant having his head shaven purposely at that time, received a Cap as a. Token of Liberty.

Tertu'lian observes, That at this time of their Manu- Tertuilian is million, the Servants received from their Masters a white refur. Cain. Garment, a Gold Ring, and a new Name added to their

former.

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By the Laws of England every Subject born within the Kings Dominions, is a Freeman of this Realm, as appears by the Grand Charter, cap. 14. yea, though he be a Bond- Magna Charles, flave to a Subject: † But a Stranger born is no Freeman, cap. 14. till the King have made him a Denizen, in whose power things : 14 alone, without the help of any other, one may be made flea §. 9. Free.

To be a Freeman of the Realm, the place of Birth, is held more considerable than the Quality of the Person; yet by the opinion of Huffey Chief Justice, and in Calvins 1 R. 3. fal. 4. Case of the Post-Nati, it is held for Law, That if Ambas-

Vide lez. 12. de jure Roman * Fuftin. In ...

adors

Aaa 3

Bacons Cafe.

I Cro. fol. 437.

Stephens Cafe,

2 Car. in the

Dutchy.

Di fredom, Bondage, Slavery &c. Book III.

Sadors of this Realm have Children born in France, or elfewhere, the Father and Mother being natural born Subjects, the Children are Free of the Realm of England: But if either the Father or the Mother of fuch Children were an Alien, then are not those Children Free.

But the Law is conceived to be otherwise at this day. The Statute de Natis ultra mare, 25 E. 3. cap. the Issue born of an English man upon an English woman, shall be a Denizen; for upon the construction of this Sta. tute it has been adjudged more than once, That if an English man marry a Foreigner, and has Issue by her born be-

IX. Disfranchising by the Romans, called Capitis dimi-

yond Seas, the Issue is a Natural born Subject.

nutio, was threefold, Maxima, Media, and Minima; the least degree was, when the Cenfors pulled a man from a higher Tribe down to a lower, and less Honourable; or when by any Censure they disabled a man from suffraging or giving his Voice in the publick Assemblies; such as were thus in the last manner punished, were termed Ararii, and in erarios veluti, quia omnia alia jura Civium Romanorum praterquam tributi & aris conferendi amiserunt. Gellius A. Gellius Note. relates, That P. Scipio Nafica and M. Pompilius, heing Attical.3. 6.17. Cenfors, taking a view of the Roman Knights, observed one of them to be mounted on a lean starvling Horse, himfelf being exceeding fat; whereupon they demanded the reason, why his Horse was so lean, himself being so sat? His Answer was, Quoniam ego, inquit, me curo; equum

First granted 17 Joh. Reg. revived 9 H.3. and fince confirmed above thirty times.

verò servus.

By the Ancient Laws of England, and by the Great Charter, no Freeman shall be taken or imprisoned, but by the lawful Judgment of his Peers (that is, by Jury, Peers for Peers, ordinary Juries for others who are their Peers) or by the Law of the Land; which is always understood by due process of the Law, and not the Law of the Land generally; for otherwise that would comprehend Bond-men, (whom we call Villains) who are excluded by the word Liber; for fuch Bond-men might be imprisoned at the pleasure of his Lord, but a Freeman neither could nor can, without a just cause; nor does the Priviledge extend to private Actions, or Suits between Subject and Subject, but even between the Soveraign and the Subject. Hence it is, that if a Peer of the Realm be Arraigned at the Suit

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of the King for a Murder, he shall be tryed by his * Peers, * The Lord that is, by the Nobles. But if he be appealed of Murder Morley and upon the profecution of a Subject, his Tryal shall be by Monteagle's Case for the an ordinary Jury of twelve Freeholders; and as the Grand Supposed Mur-Charter did, and does protect the persons of Freemen, der of one Hafo likewife their Free-hold: For by the same Charter it is slings, 15 car. 2. declared, That the King, or his Ministers, shall out no man 10 E. 4.6. 33 of his Free-hold without reasonable Judgment; and so it Hen. 8. Bro. tiwas rul'd upon a Petition in Parliament, fetting forth, that a Writ under the Privy Seal, went to the Guardian of the Great Seal, to cause Lands to be seized into the Kings Hands, and that thereupon a Writ issued forth to the Escheater, to seize against the form of the Great Charter; 8 Ed. 3. Rot. upon debate of which, the party had Judgment to be re. Parl. m. 7. flored: the greatest and most Explanatory Act, which fucceeded in point of Confirmation, was that of Edward the Third, the words are, That no man, of what effate 28 E. 3. cap. 30 or condition foeber he be, thall be put out of the Lands and Tenements, nog taken, og impgifoned, nog diffnherited, not put to death, without he be brought to an= fwer by due process of the Law; that is, by the Conmon Law.

2 Diminutio media, was an Exilement out of the City, without the loss of ones Freedom; the words of the Judgment or Sentence were, Tibi aqua & igni interdico.

3. Diminutio maxima, was the loss both of the City and the Freedom, and by his Judgment or Sentence was obliged and limited to one peculiar Country, all other places in general being forbidden him.

There was a fourth kind of Banishment, Disfranchising, called Relegatio; which was the Exilement only for a seafon, as that of Ovid's,

Adde quod edictum quamvis immite minaxque, Attamen in pæna nomine 'ene fuit : Quippe relegatus, non exul dicor in illo. Ovid. de Trift. lib. 2.

The Laws of England in this matter have some resemblance with those of the Romans; for Braston observes four Distinctions.

Aaa 4

1. Specialis,

Di frædom, Bondage, Slavery, &c. Book III

In London the fame is done by exhibiting an Information in the name of the Common Serjeant, in the Mayors Court there against any Citizen that dishonour.

1. Specialis .. hoc est , interdictio talis Provincia, Civitatis, Burgi aut Villa.

2. Generalis, Interdictio totius Regni, & aliquando est, 3. Temporaria, pro duobus, tribus, quatuer, ant pluri-

bus annis, aut, &c .-

4. Perpetua, pro termino vitæ, & exilium est aliquando ex arbitrio Principis, sicut in exiliando Duces Hertfordiz 6 Norfolcia, per Regem Richardum Secundum, & aliquando shall justly de- per Judicium Terra, ut fit in casu Piers de Gaviston, & ctiam serve so greata in casu Hugonis de le Spencer Junioris, qui ambo fuerunt exilit' per Judicium in Parliamento. So likewise was that of the Banishment of the Earl of Clarendon, who dyed beyond

17 Car. 2. 6.2. Sea *.

a Capital crime ment.

X. Abjuration was also a Legal Exile, by the Judgment Mr. Selden ob- of the Common Law, as also by the Statute Law; and in the time of K. the Statute of Westm. the second, cap. 39, he that Ravishes Henry the First, Ward, and cannot render the Ward unmarried, or the and of other value of his Marriage, must abjure the Realm; and this is Kings, both be- a general Exile. And by the Statute made 31 Ed. 1. But fore and after chers are to be abjured the Town, if they offend the fourth him, that if any man accused of time, in felling meazled Flesh; and this is a special Banist-

done at Sea, being publickly called Five times by the Voice of the Cryer, after fo many feveral days affigned, did not make his appearance in the Court of Admiralry, he was banished out of England; & de mere appurtenant au Roy d'Angleterre, for forty years more or les,

according to his offence. Mar. Clauf. fol. 12.

A man Exil'd does forfeit these things.

1. He loseth thereby the Freedom and Liberty of the

Nation out of which he is Exiled.

2. He forfeits his Freedom in the Rurrough or City where he was free; for he which forfeits the Freedom of the whole Realm, forfeits his Freedom in every part.

3. The Law accounts him as one dead; for his Heir Bulftrod. 3-part, may enter, and fo may his Wife enter into her own Lands,

and may fue an Action as a Feme fole.

15 E. 3. Fitzb. Petition pl, 2.

34 E.I. I H. 4.

fol. 188.

4. He shall forfeit those Lands which he shall purchase in the Realm, during his Banishment; for he during his Banishment is as much disabled to purchase as an Alien; for fit alienigena by his Banishment, and he is observed to be in a worse condition than an Alien; for he is marked with indignatio Principis. 'Tis true, he cannot forfeit neither

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8. R. fol. 126.

Cafe City of

London.

Title of Honour, nor Knighthood, nor the Lands he had * Totles Magna before Exile, unless there be special Sentence or Judgment, Charta, fol. 50, as that of the Spincers *.

If the Father be in Exile, this hinders not the Freedom of the Son, for the same is not a thing descendable; for should it be so, then the Banishment of the Father would make a Forseiture of the Freedom; but the Son has this Freedom by his own Birth, as a Purchase, and not by the death of his Father by descent: Like the Case where J. S. hath many Children, and then he consessed himself a Villain to J. D. in Court of Record; yet his Children formerly born are Freemen, and no Villains; the reason is, because they were Free by their own Births; but the Inheritance is inthralled, because it is to come to the Heir by descent.

XI. A Free-man of a City or Burrough may be made divers ways, as my Lord Coke observes,

1. By Service.

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2. By Birth, by being the Son of a Free-man.

3. By Purchase, or Redemption. At Bristol by Marriage.

Sir John Davis in his Irish Reports observes the same Fol. 12. for Law. St. Paul was born at Tarsus in Ciciia, which was under the obedience of the Romans; by virtue of which he challenged the priviledge of a Roman Citizen; but it was accounted no more than a National Freedom; like that of Cavin, who claimed the general Freedom of an Englishman, being born in Scotland, but under the obedience of the King of England; but that Challenge made not St. Paul Free of the private Customs, Priviledges, and Franchises of Rome, no more than Calvins Birth made him a Free Citizen

of London, to the particular Customs of that City.

The King, by his Letters Patents, cannot make one a King Edward free-man of London; * yet he may thereby make him a the 3^d granted to John Falcount de Luca

an Apothecary of the City of London, quod isse omnibus libertatibus quas Cives Civitatis predict babent in eadem Civitate alibi infra Regnum Angl' nostrum babeat, gaudeat & utatur, &c. Rot. Pat. 32 E. 3. in the Tower; yet it was held. That this Grant did not make him a Free-man of the City, for it cannot be attained but by one of those ways. * Case of the City of London, Co. 8. Report.

If one be born in a City, of Parents that are not Free, the Child hereby is no Citizen by Birth; and if one be

Of friedom, Bondage, Slabery, &c. Book III.

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born of Free Parents out of the place of Priviledges, as London, &c. he yet is a Free-man by Birth; yet in the Charter granted to Yarmouth, the words were, Concessimus Burgensibus de magna Yarmutha de Villa pradict' oriundis, that they should have such and such Liberties: so that spe-

cial words may alter the case.

Confirmed by Magna Charta, cap. 9. Rot. Parl. 7 R. num. 37.

9 E. 2. cap. 2. 29 E. 3. cap. 2. 27 E 3.cap. 11.

9 H. 4 this Act is not printed.

London had many Royal Franchifes granted them from time to time, and were often by former Kings successively confirmed, nor wanted they a share when the great Charter was granted, to have their ancient Liberties fecured, nor were the succeeding Princes slack in their Royal Grants and Confirmations; but especially Richard II. who in Pailiament granted and confirmed to them all their ancient Customs and Liberties, with this Clause, Licet us non fuerint vel abusi fuerint; and notwithstanding any Statute to the contrary, amongst the number of their many Priviledges, the Freedom of the same was accounted of no small 7 H. 4. cap. 1. importance, fince in divers Parliaments it was very much aimed at, and endeavoured to be impaired; but at last they obtained a most gracious and Royal Confirmation in Parliament of their ancient Liberties, amongst which it is declared, That no Merchant, being a Stranger to the Liberty of the faid City, should fell any Commodities within the Liberty of the faid City to other Merchant-Strangers; nor that such Merchant-Stranger should buy of any other Merchant-Stranger fuch Merchandize, within the Liberty of the faid City, without Forfeiture thereof, faving that any Person, Lord, Knight, &c. may buy within the Liberties of any Merchant-Stranger Merchandizes in gross for their own use, so that they do not sell them again to any other. And as this City by Custom may preclude any person, not being free of the same, to sell in such manner upon fuch pain; fo any other City, which are Burroughs or Citles by prescription within this Realm, may have the like Custom, and the Goods fold or bought by fuch, may be subjected to Forseiture, but the same cannot be good by Charter or Grant.

Fames Baggs Co. 11. Rep.

A compleat Free-man is such a one as hath challenged his Freedom, and taken the Free-mans Oath, and is admitted into the Society and Fellowship of the Free-men, Citizens, and Burgesses, otherwise he hath but a bare right to his Freedom.

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CHAP. II.

Of Aliens, as in relation to their Edates real and personal.

1. Of an Alien his ability and difa- | VII. Of the Statute of Natis ultra bility in the taking and enjoying of Estates real and personal.

II. Of his capacity in purchasing, and aijability to transfer by an hereditary descent.

III. Of the rules of descents, according to the Laws of several countries.

IV. Of descents according to the rules of the Common Law of England lineal and collateral.

V. Of impediments in one that is not the medius antecessor.

VI. Of impediments in one that is the medius antecessor lineal and collateral.

Mare, and of iffues born beyond the Seas.

VIII. The Lord Cokes opinion, that if an Alien has issue two Sons Denizens, the one purchases Lands, and dyes, the other cannot inherit them, debated and refuted.

IX. Of Foreign births, which do not create a disability.

X. Of Aliens not disabled by Law to bring either real or personal actions. XI. Of Office that must entitle the King to an Aliens Estate.

XII. Of some particular Immunities and other matters relating to an Alien.

I. A'N Alen is one born in a strange Country, under the calvinus's case obedience of a strange Prince and State, and out of Co. lib. 7. the Legeance of the King of England, and can have no real Yelverton 199. or personal Action for or concerning Lands; and therefore if he purchase Lands, Tenements, or Hereditaments to him and his Heirs, albeit he can have no Heir, yet he is of capacity to take a Fee-simple, but not to hold; for the King upon Office found shall have it by his Prerogative.

So it is if he pur chase Lands and dyes, the Law doth Lord Dyer 283.

cast the Freehold and Inheritance upon the King.

But if he purchase or take a Lease for years of a House or Ware-house, which is for the accommodating him as a Merchant-Stranger, whose Prince or State is in League with ours, there he may hold the same, for that the same is incident to Commerce.

And in that case if he departs and relinquishes the Realm, the King shall have the same, so it is, if he be no

Merchant.

The

Sir Fames Crofts Case by the Judges.

The like Law is, if he takes a Leafe of Meadows, Pasch. 29 Eliz. Lands, Woods, or Pastures, the King shall have the same; for the Law provides him nothing but a habitation to trade and traffick in as a Merchant.

II. Though he may take by Purchase by his own Contract, that which he cannot retain against the King, yet the Law will not enable him by an Act of its own to transfer by hereditary descent (the Alien dying, his issue a Demizen born) the Land will not descend, or to take by an Act in Law; for the Law, Que nihil facit frustra, will not give him an Inheritance or Freehold by an Act in Law, for he cannot keep it.

> 1. By Descent. Therefore the Law 2. By Courtesie. will not give him 3. By Dower. 4. By Guardianship.

And in respect of that incapacity he resembles a person

Attaint, but with this difference.

The Law looks upon a person attaint as one that it takes notice of, and therefore the eldest Son attainted overliving the Father, though he shall not take by descent in respect of his disability, yet he shall hinder the descent to the

younger.

But if the eldest Son be an Alien, the Law takes no notice of him, and therefore as he shall not take by descent, so he shall not impede the descent to the younger Brother: As for instance, If there be three Brothers, the eldest an Alien, the other two naturalized, and the middle Brother purchase, and dyes without issue, the younger Brother shall have the Lands.

III. Concerning the Rules of Descents, we are not to govern our felves therein by the general notions of Love or proximity of Nature, but by the Municipal Laws of the Country wherein the question ariseth; for the various Laws of divers Countries have variously disposed the manner of descents, even in the same line and degree of proximity: For instance, The Father certainly is as near of kin to the Son, as the Son is to the Father, and is nearer in proximity than a Brother, and therefore shall be preferred as next of kin in administration to the Sons Estate.

According to the Jews, for want of issue of the Son, the Father succeeds, excluding the Brothers, and that hath - been

3. Report Ratlift's Cafe.

32 Ed. 3.

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been the use and construction of the Jewish Doctors upon Seld. de succes-Numb. 27. 9. but the Mother was wholly excluded. 2. According to the provision of the Greeks for the fuc- Hebrans, cap. 20:

cession or exclusion of the Father, is left doubtful.

3. By the Roman or Civil Law, according to the estimation of the twelve Tables, the Father succeeded in the purchase of the Son for want of issue of the Son, under the Comment on title proximit agnato, and fo was the use; but my Lord 8 tit. I. de bare-Coke supposes the contrary.

But taking the whole Institution of Justinian, the Son state venientidying without iffe, his Brothers, Sifters, Father, or Mother bus. do succeed him as well to Land as Goods, in a kind of tig. de Testa-

Copercenary.

4. According to the Laws of Normandy, (which in some Customs Northings have a cognition with our Law) his Brothers are mand. c. depreferred before the Father, (if the Son dye issueless) but scheancres. his Father before his Uncle.

s. According to the Laws of England the Sons dying fans iffue, or Brothers, or Sisters, the Father cannot succeed, but it descends to the Uncle.

IV. There be two kinds of descents, according to the

Common Laws of this Realm.

1. Lineal, from the Father or Grandfather to Son or Grand-fon.

2. Collateral or transversed, as from Brother to Sister, Uncle to Nephew, and è converso: And both these again of two forts.

1. Immediate, as in lineals from Father to Son.

2. Mediate, as in lineals from Grandfather to Grandchild, where the Father dying in the life time of the Belli ac Pacis, Grandfather, is the medium differens of the descent.

Collateral, as in lineal from Uncle to Nephew, or è con-

verso.

And this mediate descent, or mediate Ancestor, though to many purposes it be immediate; for the Father dying in the life of the Grandfather, the Son succeeds in point of descent in the Lands immediately to the Grandfather; and in a Writ of Entry shall be supposed to be in by the Grandfather, and not in the post & cui.

This is called a mediate descent, because the Father is the medium through whom the Son derives his title to the

Grandfather.

sionibus apud

Littleton, fo. 10. dibus ab inte-

Goodwyn Anmentis, fol. 233:

Grotius de Fure lib. 2. cap. 7.

- In

In immediate descents there can be no impediment, but what arises in the parties themselves: For instance, the Father feized of Lands, the impediment that hinders the descent must be in the Father or Son, as if either of them be attaint, or an Alien.

In immediate descents, a disability of being an Alien or Attaint, in him that is called the media anteceffor, will difable a person to take by descent, though he himself have

no fuch difability.

In lineal descents, if the Father be Attaint, or an Alien, and hath issue a Denizen born, and dye in the life time of the Grandfather, the Grandfather dyes seized, the Son

shall not take, but the Land shall escheat.

Dyer 274. Grajes.

In collateral descents, A. and B. Brothers, A. is an Alien or attaint, has issue C. a Denizen born, B. purchases Lands and dyes without iffue, C. shall not inherit, because A. which was the medius antecessor or medium differens, is uncapable.

V. But in any descents, the impediment in an Ancestor that is not medius anteceffor, from whom and to whom will

not impede the descent.

As for instance, The Grandfather and Grandmother Courtney's Cafe Common Pleas both Aliens, or attaint of Treason, have issue, the Father Coron.fol. 141. a Denizen, who hath issue the Son a natural born Subject, the Father purchases Lands, and dyes, the Son shall be Heir to the Father, notwithstanding the disability of the Grandfather, (and yet all the blood which the Father hath is derived from his disabled Parents) for they are not medical antecessores, between the Father and the Son, but para-

> The Law does not hinder, but that an Alien is of the Same degree and relation of consanguinity, as natural born Subjects or Denizens born, the Son, Father and Brother though Aliens; the Son, Father and Brother our Law takes notice of as well as natural born Subjects, and so it was adjudged, for he shall be preferred in Administration, though an Alien,

as next of Kin.

But in cases of Inheritance the Law takes no notice of him, and therefore as he shall not take by descent, so he shall not impede the descent to the younger Brother: As for instance, A. an Alien, B. and C. naturalized by Act of Parliament, (Brothers) B. purchases Lands, and dyes fine prole, C. shall inherit, and not A.

Mich. I Car. Cro. 3. part, Caroon's Case,

32 Ed. 3. tit. Cozinage: 5.

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A. an Alien, B. and C. his Brothers both naturalized Ramfey's Cafe, by Act of Parliament, B. purchases Lands, and dyes with- 15 Car. 2. in out iffue, the fame shall not come to A, nor to his iffue, com. Banc. though a Denizen, but shall come to C. and his issue; the Law taking no notice of A. as to impede the succession of C. or his iffue, though it work a confequential difability to bar the islue of A. parallel to what the Law calls Corruption of blood, which is a confequent of Attainder.

VI. Again in lineal descents, if there be a Grandfather natural born Subject, Father an Alien, Son natural born Subject, the Father is made Denizen, he shall not inherit the Grandfather; and if the Father dyes in the life of the Grandfather, the Grand-child, though born after the Denization, doth not remove neither the personal nor const-

quential impediments or incapacity of the Father.

In collateral descents, the Father a natural born Subject Godfy and Dihas iffue two Sons Aliens, who are both made Denizens, xon's Cale, Hill. and dyes without iffue, the other shall not inherit him.

A. an Alien marries an English woman, who is feized of Lands and has iffue, the Father and Mother dyes, yet the issue may inherit the Mother, non obstante the incapacity

of the Father being an Alien.

VII. The Statute de Natis ultra Mare, declares the issue De Natis ultra born of an English man upon an English woman shall be a mare, 25 Ed. 3. Denizen; yet the construction has been, though an English 2 car. in the Merchant marry a Foreigner, and has iffue by her born Dutchy in Stebeyond the Seas, that iffue is a natural born Subject.

But if an English woman go beyond the Sea, and there 16 car. 1. cro. marry an Alien, and have iffue born beyond the Sea, that 437. Bacon's

issue are Aliens.

If an English woman marries an Alien beyond the Seas, Promdes Case and then comes into England and has iffue, they are not of Kent. Aliens, but may inherit.

'My Lord Coke in his Commentaries on Littleton, feems to com. Lit. fol. 8; be of opinion, That if an Alien has iffue two Sons born in England, one dying without iffue, the other shall not inherit him. But the Law is otherwise taken at this day, as

I conceive the reasons that have been given, are

I. Though the descent from one Brother to another Per L.C. J. Brother be a collateral descent, yet it is an immediate descent, Hales in Ram. and consequently if no disability or impediment can be sty's Case. found in them, no impediment in another Ancestor will hinder the descent between them. That

16 Fac.in B. R.

Godbolt 275.

That this is an immediate descent, appears

First, In point of pleading, one Brother shall derive himself as Heir to another, without mentioning any other

Ancestor.

Secondly, According to the computation of degrees, Brother and Brother make but one degree, and the Brother is distant from his Brother or Sister in the first degree of confanguinity and no more, by the Laws of England.

According to the Civil Law*, Brother and Brother make but one degree, for the Brother is in the second degree

from the Brother, yet both make but one degree.

According to the Canon Law t, Frater & Frater, or Frater & Soror sunt in primo gradu.

And therefore the Laws prohibiting Marriage between Kindred in the fourth degree, takes Brother and Sifter to be the first degree of the four.

The Laws of England in computation of the degrees of 31 Ed.3. Gard. Confanguinity agrees with the Canon Law, and reckons the Brother and Brother to be the first degree.

Herewith agree the Cultoms of Normandy*, which, though in some cases differ from the Laws of England, yet herein and in divers other particulars touching descents, they agree.

Another Evidence to prove that the descent between Brother is immediate, is this, (viz.) the descent between Brothers differs from all other collateral descents whatsoever, for in other descents collateral the half blood does inherit, but in a descent between Brother the half blood does impede the descent, which argues that the descent is imme-

The Uncle of the part of the Father has no more of the the half blood blood of the Mother, than the Brother by the fecond venter, the Brother by the fecond venter has the immediate blood of the Father with the Uncle (viz. the Fathers Brother) has not but only as they meet in the Grandfather; the Brother of the half blood is nearer of blood than the Uncle, and therefore shall be preferred in Administration.

It is apparent, that if in the line between Brother and Brother, the Law takes notice how the Father was the medium thereof, the Brother of the second venter should rather succeed to the other Brother, because he is Heir to the Father; therefore in a descent between Brothers the Law

* Just. 1.9. tit. de gradibus consanguinitatis 38. + Decret. Gratiani, cap. 35. quest. 5.

Litt. fett. 20. Holland's Cafe cited by Little-* Servien in

Comptes, degrees in line Collat. Solenk, Orc. Brown's Cafe. Mic. 1656. B.R. contra 5 E. 6.

Bro. Adminiftration 47. which prefers the Brother of before the Mo-

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law respects only the immediate relation of the Brothers as Brothers, and not in respect of the Father, though it is true, the foundation of their Confanguinity, is in their Father or Mother.

Again, if the Father, in case of a descent between Brothers, were fuch an Ancestor as the Law lookt upon as the medium that derives the descent from the one Brother to the other, then the Attainder of the Father would hinder the descent between the Brothers: But the Attainder of the Father does not hinder the descent between the Brothers; the reason is, because the Father is not such a medium or nexis that is looked upon by the Law, as the means deriving fuch a descent between the two Brothers: As for instance of three cases, two whereof evince the first propolition, (viz.)

That although the descent from one Brother to another Brother, though it be a collateral descent, yet is an immediate descent, and that if no disability or impediment arises in them, no impediment in another Ancestor will hinder them.

The younger Brother has iffue, and is attainted of Trea- 10 Eliz. Dyer, fon and dyes, the elder Brother has title to a Petition of 274- Grayes Right, dyes fans issue without a restitution, the younger Case, Brothers Son has lost that title; for though the title were in the Ancestor that was not attaint, yet his Father that is the medium whereby he must convey that title was attaint, and fo the descent was obstructed.

Henry Courtney had iffue Edward, and was attainted of com. placit. Co-Treason and dyed, Edward purchased Lands and dyed ron. fol. 241. without issue, the Sisters and Heirs of Henry were disabled Henry Courtney's to inherit Edward, yet neither Edward nor his Aunts were Cale. attainted, or their blood corrupted, yet because Henry was the medium through whom the Aunts must derive their Pedigree and Consanguinity to Edward, who was attainted, the descent was obstructed till a restitution in blood.

But if the Grandfather of Edward had been attainted, and not Henry, this would not have hindred the descent from Edward to the Aunts, because that Attainder had been paramount that Confanguinity which was between Henry and his Sifter, and that is proved by this third

William Hobby had iffue Philip and Mary, and was attaint-Bbb

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Mich. 40, 41 Eliz. ruled in the Exchequer in the Case of Hobby.

ed of Treason and dyed, Philip purchases Lands, and dyed without iffue; it was adjudged in that case, that non obstante the Attainder of William Hobby, Mary should inherit, because the descent and pedigree between Philip and Mary was immediate, and the Law regards not the disability of the Eather.

49 E. 3. 12. per Tank and Pershay.

If the Heir of the part of the Father be attaint, the Land shall escheat, and shall never descend to the Heir of the part of the Mother; but if the Son purchase Lands, and has no kindred of the part of the Father but an Alien, it shall descend to the Heirs of the part of the Mother.

IX. Those that are born sub fide, legiantia, obedientia Demini Regis are not Aliens; and therefore those that were born in Balcopn, Pozmandy, Aquitain, Turnay, Cales, Bupan, whilst they were under the Dominion of the Kings

of England, were natural born Subjects, and not Aliens.

Co. 7. Rep. 21. Calvin's Cafe.

versus Ramsey.

Scotland is a Kingdom by union, and therefore those that were born in Scotland under the Allegiance of the Lord Vaughan, King, as of his Kingdom of Scotland, before the Crown fol. 268. Craw came united, were Aliens born, and fuch plea against fuch persons was a good plea; but those that were born since the Crown of England descended to King James, are not Aliens, for they were born sub fide & legiantia Domini Regis; fo those that are born at this day in Wirginia, Dew England, Barbadoes, Jamaica, or any other of his Maje ities Plantations and Dominions, are natural born Subjects, and not Aliens; so likewise those that are born upon

Sir John Burrough's Soveraignty of the Seas, fol. 102, the King of England's Seas, are not Aliens.

X. But if an Alien be made an Abbot, Prior, Bishop, or Dean, by the plea of an Alien, we shall not disable him to bring any real or mixt action concerning the possessions that he holds in his politick capacity, because the same is brought in auter droit.

Pasch. 31 Eliz. C. B.

· The like Law is for an Executor or Administrator, because the recovery is to anothers use.

Mich. 6 Fac. in C. B. Brownlow 1. part, fol. 45.

If an action is brought against an Alien, and there is a Verdict and Judgment against him, yet he may bringa Writ of Errour and be Plaintiff there, and that fuch plea is not good in that case.

Though an Alien may purchase and take that which he cannot keep or retain, yet the Law hath provided a mean

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of inquiry before he can be divested of the fame, for until Mich. 29 Elit. Office be found, the Freehold is in him.

And this Office, which is to gain to the King a Fee or borough, Fo.29. Freehold, must be under the Great Seal of England, for a coke 5. part. Commission under the Exchequer-Seal is not sufficient to Pages Case, fol. entitle the King to the Lands of an Alien born, for the 52. Moore 4. Commission is that which gives a title to the King, for be. Walton ver. Mafore that the King hath no title ; but in cases of Treason Dyer282. Alien. there upon Attainder, the Lands are in the King without Stamfords Pre-Office; and in that case, to inform the Court, a Commist- rogative Regis,

XI. If an Alien and a Subject born purchase Lands to them and to their Heirs, they are joynt Tenants, and shall crog verf Gayer iovn in Assize, and the Survivor shall hold place till Office cro. 3. part, fol.

fion may go out under the Exchequer-Seal.

By the finding of this Office the party is out of possessis- Plond. com. on, if the same be of Houses or Lands, or such things as 477. do lye in livery; but of Rents, common Advowsons, and 17 E.z. fol. 10. other Inheritances incorporeal which lye in Grant, the Hen. Hills Cases Alien is not out of possession (be they appendent or ingross) therefore if an Information or an Action be brought for the same, the party may traverse the Office in that Court, where the Action or Information is brought for the King.

And if the King obtains not the possession within the * 29 Assign 30, year after the Office found, he cannot seize * without a 32. 32 Affice

Scire facias.

It is not for the Honour of the King (an Alien purchasing Stamfords plt. of a Copy-hold) to seize the same, for that the same is a fol. 54. cap. 18. base Tenure; and so it was adjudged t where a Copy-hold was furrendred to J. S. in trust that one Holland an Alien, †23 Car.in B.R. should take the profits thereof to his own use and benefit; vers. Holland. upon an Inquisition taken, it was adjudged the same was void and should be quashed, because the King cannot be entitled to the Copy-hold Lands of an Alien, nor to the use of Copy-hold Lands as the principal case was.

An Alien Infant under the age of 21 years, cannot be a Stat. 14 Car. 2. Merchant Trader within this Realm, nor can he enter any cap. 11.

Goods in his own name at the Cultom-house.

If an English man shall go beyond the Seas, and shall there become a fworn Subject to any Foreign Prince or State, 14, 15 H. 8. he shall be looked upon in the nature of an Alien, and shall cap. 4.

in C. B. Golds-Mich. 30 Elit.

art. 18. fol. 53. tit. Kings Sci-

Travers 32. vouched in

Styles 20. King

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Hill. 12 7ac. fol. 19. cited in Sir Thom. Walter's Cafe.

372

An Alien is robbed, and then he makes his Executor. Bulftrod 3 part, and dyes, and afterwards the Goods are waft, the Lord of the Franchise shall not have them, but the Executors. Vide Stat. 13 E. 4.

Yelverton 199. Turioste versus Monfon 8 Fac.

All personal actions he may sue, as on a Bond, so like. wife for words; for the Common Law according to the Laws of Nations protects Trade and Traffick, and not to have the benefit of the Law in fuch cases is to deny Trade.

Moore, fol. 481. But yet Aliens and Denizens are reftrained by the Statute of 5 Eliz. Ca. to use any Trade, not having served seven years as Apprentices within the Realm. Vide the Statute what Trades, Trin. 12 Car. 1. at Sergeants-Inn in Fleet-freet by all the Judges. Hutton's Reports, fol. 132. but quere that Resolution.

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CHAP. III.

Df Maturalization and Denization.

 Whether the Kings of England can naturalize without Att of Parliament.

II. What operation Naturalization hath in reference to remove the difability arifing from themselves.

III. What operation Naturalization hath in reference to remove defects arifing from a lineal or collateral Ancestor.

IV. Where persons born out of the Realm may inherit by the Laws of England.

V. A Kingdom conquered, and united to the Crown of England, whether by granting them a power to make Laws, can implicitly create in them such a Soveraignty, as to impose on the Realm of England.

VI. Of persons naturalized by a Kingdom dependent, whether capable of imposing on one that is absolute.

VII. Of Kingdoms obtained by conqueft, how the Empire of the same is acquired, and how the Conquerour succeeds.

VIII. Ireland what condition it was

accounted before the Conquest, in reference to the Natives of the same, and whether by making it a Kingdom, they can create a Foreigner as a natural born Subject of England.

IX. Of Aliens, in reference to the transmission of their Goods and Chattels by the Laws of France.

X, Of the Priviledges the Kings of England, of old, claimed in the Estates of Jews dying commorant here, and how the same at this day stands.

XI. Of persons born in places annexed or claimed by the Crown of England, how esseemed by the Laws of the same.

XII. Of Denization, and what operation it hath according to the Laws of England.

XIII. Where an Alien is capable of Dower by the Laws of England, and where not, and of the total incapacity of a Jew.

XIV. Whether a Denizen is capable of the creation and retention of Honour, by the Laws of England.

I.THE Father and Mother are the fountain of the blood natural, and as it is that that makes their Issue, Sons or Daughters, so it is that that makes them Brothers and Sisters; but it is the civil qualifications of the blood that makes them inheritable one to the other, and capable of enjoying the Immunities and Priviledges of the Kingdom; but that is from another fountain, viz. the Law of the Land, which finding them legitimate, doth transplant them into the Civil rights of the Land, by an Act called Naturalization; which does superinduce and B b b 3 cloather

cloathe that natural Confanguinity with a Civil hereditary quality, whereby they are enabled not only to inherit each other, but also to enjoy-all the Immunities and Priviledges that meer natural born Subjects may or can challenge.

Serv. lib. 2. 64p. 12.

II. According to the Laws of Normandy the Prince might naturalize; but fuch Naturalization could not divest the descent already vested.

But according to our Law by no way but by Act of Parliament, and that cures the defect as if they had been born in England, and no man shall be received against an Act of Parliament to fay the contrary.

Therefore if the Father an Alien has issue a Son born here, and then the Son is naturalized, the Son shall in-

herit.

Com.Littl. 129.

If the Father a natural born Subject has iffue an Alien who is naturalized, the Father dyes, the Son hall inherit.

III. Naturalization does remove all that disability and incapacity, which is in Aliens in respect of themselves, and fo puts them entirely in the condition as if they had been

born in England. The Relative terms, as if born in England, is generally used to supply the personal defect of the parties naturalized, arising from their birth out of England, and therefore shall never be carried to a collateral purpose, nor cures a disease of another nature, as half blood, illegitimation, and the like; but all diseases, whether in the parties themselves, or refulting from the Ancestor, it cures.

Acts of Parliament of this nature may be so pen'd, as to cure defects in the Father or Ancestor, or in the parties

themselves.

If Restitution in blood be granted to the Son by Act of Parliament, this cures that disability that resulted from the Fathers Attainder, and that not only to the Son, but also to the collateral Heirs of the Father; the true reason of this is, because the corruption of the blood by the Attainder is only of the blood of the Father, for the Sons blood or collateral Heir was not at all corrupted; for the scope of the Act taking notice of the Fathers Attainder, does intentionally provide against, and remove it, for otherwise the same had been useless.

But in Naturalization without express words, it takes

Coke 3. Instit. fol. 241.

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no notice of the defects in the Father or other Ancestor, nor removes them.

And therefore fuch Alts of Parliament as take no other notice but of the person naturalized's Foreign birth, the same cures not any disability of transmission hereditary between the Father, Brother, or any other Ancestor, resulting from the disability of them without actually naming of them: As for instance, the Father an Alien, the Son naturalized by Act of Parliament, the Father or any other Ancestor an Alien purchases Lands and dyes, the Son shall not take by reason of the disability in the Father, but there may be words inserted in the Act that may take away the impediment.

IV. There are four ways by which men born out of England may inherit in England, besides by the Statute of Edward the Third, De Natis ultra mare.

1. If they be born in any Dominion of the King's, when

he is actually King of England.

2. If they be made inheritable by Act of Parliament in

England.

3. If they be born Subjects to a Prince holding his Kingdom or Territories as Homager and Liegman to the King of England during the time of his being Homager : So the calvin's Cafe, Welch were inheritable in England before 12 Ed. 1. though fol. 21. b. Subjects to the Princes of Wales, who were Homagers to the King of England. So were the Scotch in Edward the First's time; but when once the Homage determines, then they become Aliens, otherwise Subjects, and upon that reason Magdulph a Scot appealed * from the Judg- * Placit. Park ment of his Prince to Edward the First ut Superiori Domino 21 Ed. 1. fol. Scotia; but then it must be understood where such Prince 152, 157. is Homager subjectionis, and not only infeodationis, for another King may hold of the King of England an Island or other Territory by tenure, and not be his Subject.

4. If the King of England enters in a hollile manner the Territories of another Prince or State, and any be born within any of the places or Guards possessed by the Kings Army, they are looked upon in Law to be within his protection, and fuch person born is a natural born Subject of England, but then he must be of parents Subjects +, not + 5 Eliz. Dyer, hostile; and therefore a Bastard born in Tangier is capa- fol. 224. placis.

ble of purchasing Land in England, if his parents were 29. V. Those Subjects. Bbb 4

Crawverf. Rans (ey, Lord Vangban, fol. 280.

V. Those that are born in Ireland, and those that are born in Scotland are all alike, for their births are within the Kings Dominions, and they are born under the like subjection and obedience to the King, and have the like band of allegiance ad fidem Regis; yet if a Spaniard comes into Ireland, and by the Parliament is there naturalized. though perhaps this may qualifie and cloathe him with the title of a natural born Subject of Ireland, yet it has been conceived, that it will not make him a natural born Sub-

For the union of Ireland to that of England, is different

ject of England.

My Lord Coke to conceives, ver there was any fuch modus tenendi, but the 710, 718. to

721.

from that of Scotland; for the first is dependent, as a King. dom conquered, the latter independent: Though Hemy the Second after his Conquest of that Nation, did remain but Mr. Selden over from England the ancient modus tenendi Parliamentum, denies that e- enabling them to hold Parliaments, which after was confirmed by King John; yet that was by no other force than bare Letters Patents. Now when a Nation is once consame is an im- quered, there remains no Law, but that of the Conque. posture. Vide rour; and though he may incorporate such conquered Nahis Tit. of Hotions with his own, and grant unto them their ancient Parnour, fol. 708, liamentary ways of making of Laws; yet the Conquerer can no ways grant unto them a power, by virtue of fuch Grant or Confirmation, as to impose upon his own Courtry, for he himself before such Conquest, could not make a natural born Subject without Act of Parliament, and most certainly his Conquest adds nothing to his power,

though it does increase his Dominion.

VI. Again, Kingdoms that are absolute under one Prince, Selden's Titles of Honour, fol. ad fidem Regis, there the Acts of each other are reciprocate, 213. in Scotand one naturalized by the Parliament of Scotland, is as land, the title naturalized in England, because Scotland is a Kingdom abis Carolus Scofolute, and yet in the Case of Craw and Ramsey it is there tie, Anglia. Francia, & Hi. held, That an Alien naturalized in Scotland remains an bernie Rex; but Alien notwithstanding; but Ireland is a Kingdom depenin Ireland, Ang-dent and subordinate to the Parliament of England, for lie, Scotie. the Parliament in England can make an Act to bind Ire-Note, Scotland is not a Domi- land, but not e converso. Now to be a Native of Ireland, is nionbelonging the same as to be born in Ireland, but that is by the Laws to the Crown of Ireland; but to be born in Ireland, and to be the same of England, but as to be born in England, must be by the Laws of England: to the King of But there is no Law that hath enabled them with fuch a

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uch a ower, power, as to naturalize further than their own Laws extend; but the Law of Ireland does not extend into England, therefore Naturalization in Ireland operates only in Ire-

land, because of the failure of power.

VII. Again, Kingdoms that are conquered, the Empire of the fame may be acquired by the Conqueror, only as it is in a King, or other Governor, and then the Conqueror only fucceeds into his right, and no further *, or also as * From hence 'tis in the People, in which case the Conqueror hath Em- it is that the pire, fo as that he may dispose of it, or alienate it as the King at this day People themselves might; for 'tis one thing to inquire of the cannot alien or thing, another of the manner of holding of it, the which are fell Ireland, applicable not only to corporal things, but incorporal of Parliament. alfo: For as a Field is a thing possessed, fo is a passage, an for they whose act, a way; but these things some hold by a full right of right he sucproperty, others by a right of usufructuary, others by a cceds, could not do it, co.4.

Again, by the will of the Conqueror, Instit. fol. 357. the Kingdom or Republick that is fo conquered, may cease nor can he to be a Kingdom or Commonwealth, either fo that it may grant, Portus be an accession of another Kingdom or Commonwealth, Maris obedienas the Roman Provinces, or that it may no ways add herenibus, & patroto any Kingdom or Commonwealth, as if a King waging nationibus Ec-War at his own charge, fo conquer and fubject a People clefiarum Metrato himself, that he will have them governed, not for the politicarum & profit of the People chiefly, but of the Governor, which cathedralium is a property of that we call Hersle Empire +, not of Civil; Cancellar. Justine for Government is either for the profit of the Governor, & mixto Impeor for the utility of the Governed, this hath place among rio, and many Free-men, that among Masters and Servants. The People more, all which then that are kept under fuch command, will be always are infeparably for the future not a Commonwealth, but a great Family; annexed to a Kingdom. hence it is that we may plainly understand, what kind of timperium a-Empire that is which is mixt of Civil and Herile, that is, lind eft ob utiliwhere fervitude is mixt, and mingled with some personal tatem ejus qui liberty: For if the People are deprived of Arms, com- regitur, bocinter manded to have no Iron but for Agriculture, to change habet, illud intheir language and course of life, and abstain from the use ter dominos & of many of their Customs, to be confined * to their own fervos. Arift. Houses, Castles, or Plantations, not wander abroad to be lib. 7. de Repubgoverned by fuch Laws as the Conqueror should transmit * Case of the Earlof Shrewsbury on the Stat. of 28 H. 8. of Absentees, 4. Inst. prescribes, fol. 354.

without an Act

* Or else they to them *, all which are the tokens of a Nation by Confor them, cl. 18 H. 3. m. 17. Arioviftus apud vicissent, iis quos vicissent quemadmodum vellent imperarent, de Bello Callico, l. 1.

came to London quest made subordinate to the Conqueror, and are part Herile, and part Civil; and though they may remain a Kingdom, and absolute within themselves as to the macafarem, justife king of Laws, to the obliging each other, yet they can no belli ait, ut qui ways impose on their Conqueror; for though that be true which in Quintilian is alledged on the behalf of the Thebans, that that only is the Conqueror's which he holds himself; but an incorporeal right cannot be holden, and the condition of an Heir and of a Conqueror is different, because the Right passeth to the former by the descent, but only the thing by the last by virtue of the Conquest. But certainly that is no objection, for he that is Master of the persons, is also Master of the things, and of all right which does belong to the persons; for he that is possessed to doth not possess for himself, nor hath he any thing in his power who hath not himself; and so it is, if he leaves the right of a Kingdom to a conquered People, he may take to himself fome things which were the Kingdom's, for it is at his pleasure to appoint what measure he will to his own favour: from hence it is we may observe what fort of Empire that Kingdom is at this day.

fervitute est, de reg. Juris Leg. fi venerit. D. ad Leg. 7ud. de Adult.

+ Leg. qui in

Calvin's Case, lib. 7. fol. 23.

VIII. Now Ireland before the fame became united to the Crown by the Conquest of Henry the Second, the Natives were meer Aliens, and out of the protection of the Laws of this Realm; yet when once they became a conquered People, and subject to the Crown of England, and united ad fidem Regis, then did arise their Allegiance, but that Union neither made them capable of the Laws of England, nor of their own, till fuch time as the Conqueror had fo declared them: now what do they defire in order to revive their Government? First, they humbly beg of King Henry the Second, that fince he was pleased that they should remain as a distinct Dominion, that their ancient Customs or Usages should not continue; that he would be pleased or ordain, that such Laws as he had in England * should be of

For at a general Council at cassels of all the forge, and observed in Ireland, pursuant to which he grants Clergy there, them power to hold Assemblies by the three Estates of the Anno II70. Realm, and that they should be regulated according to the **Ecclefiaftical** institution and manner of the Parliaments in England, Laws of England were established, and made of force in Ireland, Geraldus Cambrensis Topographia Hibernia, lib. 3. cap. 18. * Pat. 8 E. 1. m. 13. Hibern.

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IX.

claime death to enjo Inra should have the benefit of Magna Charta, and other the great Laws of England *, and by fuch means put them into * Matthew Paa method of governing themselves according to the known ris Hist. Angl. among themselves; and by following the example of those nibus sunt grate of England +, their Judgment might be surpervised, and accepta. corrected according to the Justice and Laws of England, † Oruck's Case, by Writs of Errour, Appeal, and the like *.

33 Eliz. Cof. 7. part, fol. 23. Calvin's Case. * Rely Placita Parliam. pag. 198. to 208.

Now here is no continuing, or reviving their ancient Government, but the introducing a new one, part Civil, and part Herile, nor indeed had they before any fuch thing as a Parliament there, or general Assembly of the three Estates; for when Henry the Second went over, there Sir John Davies were feveral Kings or Scepts, who had their feveral and on the Condistinct Assemblies; but when they submitted, this great 103, 104, 105. Assembly of Estates which he constituted, was a collection out of all of them, for their future well Government; fo that what soever modus of Regiment, the Conqueror declared it was no more than for the well governing of the place, and making fuch Laws as were necessary, and proper amongst themselves: But for them to impose, by virtue of an Act of Naturalization, upon an absolute Kingdom as Lord Vaughan, England, without the consent of the three Estates of the fol. 301. Craso fame, furely was never intended, much less effected: the versus Ramsey. case is both great, dubious, and curious, therefore quare.

IX. By the Laws of France all persons not born under the legeance of that King, are accounted Aliens, and if they dye, the King is entitled to the Estate, for all shall be seized into his Exchequer or Finances; but if they make a Will, the Prerogative is disappointed: Yet that extends only to Chattels personal, in which Strangers passing through the same, have greater Immunities than Aliens there resident; for Travellers dying without Will, the Heirs or Executors shall have benefit and possession of their

Estates.

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X. The like Priviledge the Kings of England formerly claimed in the Goods and Estates of the Jews after their death, if the Heir fued not, and paid a Fine to the King to enjoy them, as by this Record appears.

Inratores super sacrum suum dicunt quod pradictum Messuagrum

quest of Ireland

Escheat An. 52 H. 3. num. 31.

Caroon's Cafe.

Hobby's Cafe.

Stephen's Cafe.

gium fuit quondam Eliæ le Bland, qui, &c. diem clausit extremum, & quia mos est Judaismi quod Dominus Rex omnia, & Catalla Judai mortui de jure dare poterit cui voluerit, nisi propinquior hares ejusdem Judai sinem secerit pro eisdem, dicunt quod Dominus Rex dictum Messium dare poterit cui voluerit sine injuria alicui facienda, si ita quod sit hares dicti Elix, sinem non secerit pro Catallis ejusdem Elix habendis, &c.

But whether the same is now used, may seem doubtful, for the Goods of Aliens escheat not at this day to the Crown, but Administration shall be committed to the

next of kin.

XI. By the Laws of France, Flanders, Milan, Savoy, and the Franche Comté, though possessed by several other Princes, yet the Natives of the same partake in the Immunities with the natural born Subjects of France, and if they dye without Will, their Heirs claim their Estates; the reason given, because, say they, those Countries were never alienated from them, but were always annexed to the Crown of France, who acknowledges them to be their Subjects to this day.

But in England it is otherwise, for those that are born in Gascoin, Normandy, Aquitain, and those other Territories which were formerly the possessions of the Crown of England, in which if any had been born when subject to the same, they would have been natural born Subjects, yet now are esteemed Aliens; and so was the case vouched by Shard, of a Norman, who had robbed together with other English, divers of his Majesties Subjects in the Narrow Seas, being taken and arraigned, the Norman was found guilty only of Felony, and the rest of Treason; for that Normandy being lost by King John, was out of the allegiance of Ed. 3. and the Norman was accounted as an Alien.

XII. In France the Kings may there Denizize, so like wise here in England, but with this difference, the Letters of Denization by those of France remove the total disabi

lity and incapacity of the Alien.

But in England the Charter of Donation or Denization is but a temporary, partial, and imperfect amotion of the disability of an Alien; for though it puts the person Indenized, as to some purposes, in the condition of a Subject, and cnables a transmission hereditary to his Children, born after the Denization, yet it does not wholly remove the disable.

Note, This was before the Statute of 25 E.3. it's vouched by Shayd in 40. Affize pl. 24. fee Calvin's

Case 7. Report.

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e the lefeast disease or non-ability, as to the points of descent or hereditary transmission, and resembles a person in case of an Attainder; co. 1.11st, fol.2. and therefore if he purchases Lands, and dyes without iffue, the Lord by Escheat shall have the Lands.

And therefore in lineal Descents, if there be a Grandfather natural born Subject, Father an Alien, Son natural Subject, the Father is made Denizen, he shall not inherit the Grandfather; and if the Father dyes in the life of the Grandfather, the Grand-child (though born after the Denization) shall not inherit the Grandfather, for the Denization does not remove, neither the personal nor the confequential impediment, or incapacity of the Father.

So likewise in Collateral descents; as for instance, the Godfry and Di-Father a natural born Subject, has iffue two Sons Aliens, xon's Cafe. who are both made Denizens, and one dyes, the other B. R. Godbolt shall not inherit him.

XIII. The like Law in Dower, a Man seized of Lands in Fee, and takes an Alien to Wife, and then dyes, the 30 H. 8. Dyer, Wife shall not be endowed: But if the King takes an Alien 44. to Wife, and dyes, his Widow Queen shall be endowed by the Law of the Crown. Edmund, Brother of King Edward the First, married the Queen of Navar, and dyed, 26 Ed. 1. Ros. and it was resolved by all the Judges, That she should be part s. endowed of the third part of all the Lands whereof her Husband was feized in Fee.

A few born in England, takes to Wife a few born also in England, the Husband is converted to the Christian Faith, purchaseth Lands, and enseoffeth another, and dyeth; the Wife brought a Writ of Dower, and was barred of her Dower, Quia verò contra justitiam est quod ipsa Claus. 1 H. 3. dotem petat, vel habeat de tenemento quod fuit viri sui ex Memb. 17. Dors. quo in conversione sua noluit ei adherere, & cum eo conver-

XIV. If an Alien be a Disseisor, and obtains Letters of Denization, and then the Disseisor release unto him, the co. 1. Infl. fol. King shall not have the Land; for the Release hath altered 278. B. the Estate, and it is as it were a new Purchase, otherwise it is as if the Alien had been Feoffee of the Disseisee.

And though Aliens are enabled by Charter of Denization to a transmission hereditary to their polterity of Lands, yet a Denizen is not capable of Honour, nor a transmision of the same, without Naturalization by Parliament;

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Co. 4. Instit. fol. 47. for by the Charter of Denization he is made, quasi seu tanquam ligens, but to be a Member of Parliament, he must be ligens revera, & non quasi, for by his becoming a Noble-man, he claims the place of Judicature in Parliament, the which he cannot till naturalized by Act of Parliament, and then he may claim as eligible to the same, or any other: And the same Law is at this day in France, where no Foreigner can hold any Honour or Dignity in the State or any part of the Government. 'Tis true, Cardinal Mazarine, who was an Italian, held a great share in the same, but it was vi, manu & forti, and was the occasion of intro-

Decreed in the grand Estate at Paris 1607.

Vide Monmouto Hist. of France, fol. 15.

Duke of Richmond claimed the Honour or Dignity of a Peer of France as Lord of Aubon, but that was a Title rather annexed to the Tenure of that Seignory than otherwise.

And though His Majesty has been pleased to confer the

And though His Majesty has been pleased to confer the Dignity of Dutchess of Portsmouth on the Lady Carwel, yet the same is rather Honorary than a Title consistent with the Laws of England: for though His Majesty is the Fountain of Honour, and may call the meanest of his Subjects to the highest of Dignities; yet it is their Civil qualifications which make them capable of injoying the Immunities and Priviledges of Peers, but that flows from another Fountain, even the Law of the Realm, which as to Denizens disables them to take so signal a mark of Soveraignty without Act of Parliament.

CHAP.

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CHAP. IV.

Df Aliens and Cryals per medietatem, where allowed, and where not.

I. Of the manner of Aliens obtaining Tryals per medietatem, at the Common Law, and of the Antiquity of the Same.

II. Of the making the same a Law universal within this Realm, as to some persons, afterwards general,

III. Of the writ, and some Observations on the Summons of such an Inquest.

IV. Of the opportunity lost, or gained by praying this immunity.

V. Of the awarding of Tales upon request on such Enquiries.

VI. Where this immunity does not extend in Aliens, and where it does in matters Civil and Criminal. VII. Of the validity of a Witneß Alien, and of an Infidel.

VIII. The title of a Renegadoe. IX. Of the benefit of the Kings Pardon, whether it extends to an Alien whose abode is here, but happens to be absent at the time of the promulgating.

I. T Riatio bilinguis, or per medietatem lingua, by the Common Law was wont to be obtained by Grant of the King, made to any Company of Strangers, as to the Society of Lombards, or Almaignes, or to any other Corporation or Company; when any of them were impleaded, the Sanf. Pl. Coronmoity of the Enquest should be of their own Tongue; this lib. 3. cap. 7. Tryal per medietatem in England is of great Antiquity, for in some cases Tryals per medietatem was before the Con- Lamb. sol. 91. 3. quest, Viri duodeni Jure (onsulti, sex Wallia totidem Anglia & Wallie jus dicanto, and as the Commentator observes, it co. 1.Infl. 155 was called duodecim Virile Judicium.

II. This Immunity afterwards being found commodious to us Islanders, became universal; for by the Statute of 27 E. 3. cap. 8. it was enacted that in Pleas before the 27 E. 3. cap. 8. Major of the Staple, if both Parties were Strangers, the Tryal should be by Strangers; but if one Party was a Stranger, and the other a Denizen, then the Tryal should be per medietatem lingue: But this Statute extended but to a narrow compass, viz. only where both Parties were Mer- 28 E.3. cap. 13. chants, or Ministers of the Staple, and the Pleas before the Major of the Staple: But afterwards in the twenty eighth

year of the same Kings Reign it was enacted, That all matiner of Enquelts, which was to be taken, oz made amongft Aliens and Denigens, be thep Werchants . 02 others, as well befoze the Majoz of the Staple, as befoze any other Juffices of ministers: Although the King be Party, the one half of the Enquest or proof shall be Deni. zens, the other half Aliens, if so many Aliens and Foreigners be in the Town or place where such Enquest or proof is to be taken that be not Parties, nor with the Parties in Contract, in Plea, or other quarrel, whereof such Enquest or proof ought to be taken; and if there be not fo many Aliens, then shall there be put in such Enquests or proofs as many Aliens as shall be found in the same Town or places. which be not thereto Parties, as aforefaid; and the remnant of Denizens, which be good men, and not suspicious to the one Party or other.

But if it be for num. 5.

By which Statute the same Custom or Immunity was Treason & con- made a Law universal, although it be in the Case of the tra. Vide postea King, for the Alien shall have his Tryal per medietatem.

Dyer 144.

It matters not whether the moity of Aliens be of the fame Country, as the Alien party to the action is; for he may be a Dutch-man, and they Spaniards, French, Walloons, &c. because the Statute speaks generally of Aliens.

Stat. 18 Eliz. cap. Cro. 3. part 818. 841.

III. The Form of the Venire facias in this case is, De Vicenet', &c. quorum una mediet as fit de Indigenis, & altera mediet as fit de aliegenis natis, &c. And the Sheriff ought to rerurn twelve Aliens and twelve Denizens, one by the other, with addition which of them are Aliens, and so they are Bro. tit. Tryal. to be fworn; but if this Order be not observed, it is holpen as a mifreturn.

> It has been conceived of some, that it is not proper to call it a Tryal per medietatem Lingue, because any Alien of any Tongue may ferve; but that furely is no Objection, for people are distinguished by their language, and medictas Lingue is as much as to fay half English, and half of another Tongue or Nation what soever, nor matters it of what Sufficiency the Jurors are, for the form of the Venire facial shall not be altered, but the clause of quorum quolibet ha-

Cro.3.part 381.

beat 4. &c. shall be in. If both Parties are Aliens, then the Enquest shall be all English; for though the English may be supposed to favour

themselves more than Strangers, yet when both Parties are Aliens,

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Aliens, it will be prefumed they will favour both alike, 21 H. 6. 4. without any difference.

IV. If an Alien is party, who flips his opportunity, and fuffers a Tryal by all English, the same is not a Verdict Erroneus; for if he will be so negligent as to slip that advan- Dyer 286 tage which the Law gives him, it is his fault; for the Alien, if he will have the benefit of that Law, he must then pray a Venire facias per medietatem Lingua, at the time of the awarding the Venire facias: But if a neglect of that opportunity happens, yet if he prays it after the awarding a general Venire facias, the same may be retrieved so as it be Dyer 144. before the Venire be returned and filed, for then he may 21 H. 7. 32. have a Venire facias de novo, or otherwise he cannot, nor can he afterwards challenge the Array for this cause, if it falls out the Juries are all Denizens; though Sandford feems Pl. Coron. 159; to be of a contrary opinion, for the Alien must pray it at Dyer 357. his peril.

V. If there be a general Venire facias, the Defendant 3 E.4. 11, 12 cannot pray a decem Tales, &c. per medietatem Lingua upon this, because the Tales ought to pursue the Venire facias: But if the Venire facias be per medietatem Lingue, the Tales ought to be per medietatem Lingua, as if five Aliens and five Denizens appear on the principal Jury, the Plaintiff may have a Tales per medietatem; but if the Tales be general de co.l.io.fo.1045 circumstantibus, it hath been held good enough, for there being no exception taken by the Defendant upon the a-

warding thereof, it shall be intended well awarded. If an Alien that lives here under the protection of the King of England, and amity being between both Kings, 21 Herb. 4. commits Treason, he shall by force of the Act of 1, and 2. Stamford. 154. Philip and Mary, be tryed according to the due course of Hill. 36 Eliz. the Common Law, and shall not in that case be tryed per me- by all the Juddietatem Lingua.

But in case of Petit Treason, Murder, Felony, &c. if he prays his Tryal per medietatem Lingua, the Court ought to Vide Lord Dyer grant it.

Cro. 3. part, folo 818,841.

Dr. Lopez Cafe

fol. 144. the Case of Sherily

where the point is fully handled. Co. Instit. 3. part, fol. 27.

Yet if an Information be exhibited against an Alien, the Moores 557. Tryal is not per medietatem, but according to the Common Barr's Cafe.

If an Alien in League bring an action (if there be cause) the

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Coliure coke's the Defendant may plead in abatement; but if it be an Entries tit. A-Alien Enemy he may conclude in the action.

lien I. Stamf. 160. B. 28 Ed. 3. 13. 2 H. 5. 3.

In an action for words the Defendant pleaded not guil. 25 Ed. 3. cap. 8. ty, and faid he was an Alien born, and prayed Tryal per medietatem Lingua, which was granted, and at the nisi prius in London; but fix English men and five Aliens appeared, and the Plaintiff prayed a Tales de Circumstantibus per medie. tatem Lingue, and it was granted, fo there wanted one

Alien, and the Record was:

Ideo alins Alienigena de Circumstantibus per vic' London, ad requisitionem infra nominati Julii Cæsaris, pro mandato Justiciarum de novo apposito, cujus nomen pannelo prædict' affilatur secundian formam Statuti, in hujusmodi casu nuper editi & pro. viso, qui quidem Jurato sic de novo appositus, viz. Christianus Dethick Alienigena exactus venit ac in Juratam illam simul cum aliis Juratoribus pradict. prius impanellatis, & Juratis Juratus fuit, &c. It was found for the Plaintiff, and after. wards moved in Arrest of Judgment, That no Tales was to be granted de Circumstantibus, when the Tryal is per midietatem Lingue, by the Justices of Nisi prius, by the Act of 35 H. 8. because in the Act it is spoken of Free-hold of Jurors, and an Alien is not properly faid of any Country, or to have any Free-hold; but it was adjudged because the Statute was made for speedy Execution, that it should be expounded favourably, according to the intent and meaning of the Makers of the Act; and though in this case the Tales was prayed by the Plaintiff, where it ought to have been ad requisitionem Defendentis, yet that should be taken

Mich. 35, 36 Eliz. in B. R. Str Julius Cafar versus Philip Corfini.

> to be but a misprision, and would be amended. VI. If the Plaintiff or Defendant be Executor or Administrator, though he be an Alien, yet the Tryal shall be by English, because he sueth in Auter droit; but if it be averred that the Testator or Intestate was an Alien, then it shall

fol. 275. be per médiet atem Lingua.

Shely a French man who joyned with Stafford in the Re bellion, in the taking of Scarborough Castle in the County of Fork, he being taken, was arraigned in the Kings Bench upon an Indictment of Treason, and the Indictment was contra legiantiam suam debitam; and the Indictment was rul'd to be good, although he was no Subject, because it was in the time of Peace between the Queen and the French But if it had been in the time of War, then the party

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party should not have been indicted, but ransomed. It was likewise rul'd there, that the Tryal was good, although the Venire facias awarded in Tork was general, and not de medietate Lingua; for such Tryal per medietatem Lingua does not extend to Treasons, and the Indictment ought to 4 Mar. Dret omit the words, Naturalem Dominam suam, and begin that 145. he intended Treason contra Dominam Reginam, &c. Hill. 36 Eliz. in B. R. Stephano Ferraro d'Game's Case in Dr. Lopez Treason.

If an Alien Enemy come into this Realm, and be taken in War, he cannot be indicted of Treason, for the Indictment cannot-conclude contra legiantiam suam debitam, for he never was in the protection of the King; and therefore he shall suffer death by Martial Law, and so it was rul'd in 13 H. 7. in Perkin Warbeck's Case, who being an Alien born in Flanders, feigned himself to be one of the Sons of King Edward the Fourth, and invaded the Realm, with intent to take upon him the Dignity; who had his Judgment and Tryal by Martial Law, and not by the Common

Law of England.

VII. The Kingdom of Ireland was a Dominion Separated and divided from England at the first, and came to the Crown of England by Conquest, in the time of Henry the Sir John Da-Second; and the meer Irish were as Aliens, Enemies to the vies Conquest Crown of England, and were disabled to bring any action, 103,104, 105. and were out of the protection of the Laws of this Realm: and five Scepts of the Irish Nation were only enabled to the Laws of England, viz. Oneil de Ultonia, O Molloghlin de Media, O Connoghor de Connacia, O Brian de Tholmonio, and Ma Murogh de Lagenia, as appears by the Records of the Dominion of Ireland, and several Grants have been made to the Irish, which proves them to be meer Aliens. But afterwards, though the same was a separate and divided Kingdom, yet whilft they were under the subjection and obedience of the Kings of England, if High Treason had been committed by an Irish-man, he might be arraigned, indicted, and tryed for the same within England, and by co. 7. fol. 23. the Laws of England; and so it was resolved by all the calvin's Case. Judges of England in Oruck's Case, 33 Eliz. and also in Sir John Perrot's Case, That Ireland was out of England, and yet that all Treasons committed there, were to be tryed in England, and that by virtue of the Statute of 38 H.8. cap. 23.

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Arthur Crohagan, an Irish man, was arraigned, for that he being the Kings Subject, at Lisbon in Spain used these words, I will kill the King (innuendo Dominum Carolum Regem Anglia) if I may come unto him, because he is a Heretick; that afterwards he came into England, and was taken, and tryed by a Jury of Middlefex, and was found guilty; and it was held High Treason by the course of the Mich. 4 Car. 1. Common Law, for his Traiterous intent, and imagination of his heart is declared by these words, and within the Sta. tute of 25 E. 3. he confessed he was a Dominican Fryar, and Priest in Spain.

14 Eliz. in the Case of the Duke of Nor-

Cro. fol. 242.

Bracton fays, that an Alien born cannot be a Witness; but that is to be understood of an Alien Infidel, for the Bifolk, co. Inflit. shop of Roffe, being an Alien born (a Scot) was admitted 4. pt. fol. 279. to be a Witness, and Sworn.

Yet an Infidel may bring an Action against another Mer-* 11 H.8.fol.4. chant, or any other however *, and that without contro-

verfie.

The testimony of a Renegadoe is not to be received at this day, by the Laws of any Christian Kingdom or Republick; he that hath once renounced his Faith can never be believed, therefore he cannot be a Witness; and so it was rul'd where one Domingeo de la Cardre, a Renegadoe, who was fworn, and gave evidence; afterwards a new Tryal being granted, his testimony was rejected, and he not suffered to be sworn, it being at his Tryal proved, that he was a Spaniard, and a Christian by birth and education, and after became a Jew.

Hill. 17, 18 Car. 2. in B. R. Robles versus Langston.

Hobart, fol. 271. Courten's Cafe.

If an Alien be resident, and commits an offence, he shall have the benefit of the Kings general Pardon; but if he is not in the Kingdom at the time of the Pardon promulgated, then he loses the benefit of the same; for he is no otherwise a Subject, but by his residence here.

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CHAP. V.

Df Planterg.

1. Of Possession, and its original right.

II. Of Vacancies natural, which give a right to Planters.

III. Of civil Vacancies, how far the fame may be possessed.

IV. Of persons expelled, whether just

to deny such to plant in places va-

V. Of Planters, whether they have a firm right, so as to dispose by Will, or only a Usufructuary possession.

VI. Of Planters, wanting things necessary for the support of humane life, generally considered according to the Laws of Nature.

VII. Wherefore one man may natu-

rally have more than another, and what conditions are annexed to such fortunes, for those that are in necessity.

VIII. Whence it is that there was at the beginning, and is fill a tacite condition of re-assuming our Original rights, in case of extreme or natural necessity for natural Community.

IX. Of necessity considered in a Christian Community.

X. Of the Primitive Communion, considered in reference to its restrictions and limitations.

XI. Of those things that are dedicated to God, and holy use, whether subject to the relief of our necessities.

I. Having in the first Chapter of this Book discoursed of the Original of Property deducing its inception, to that which we call possession, or meum, and how the same may be altered by War; it may not seem unnecessary to discourse of the acquiring of Property in the new discoveries of those vast immensities of America, which being prepossession, seem to deny us legally that title which we pretend to.

Possession by Law, is esteemed the highest title that men can pretend to what they enjoy, which is nothing else but possession pedis; as if the Ancients had no other seal to confirm their Tenures, but the prints of their seet: and good reason, seeing the mind is not able to take up a place so well as the body; for many mens wills may concur in (wishing and liking) the same thing, but many bodies cannot concur to the possession it: Besides the mind cannot set an outward mark on what it likes, that thereby others might be warned to abstain from it, all which the body properly doth. Abraham and Lat going to plant, Ccc 3

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declared no more than this, there was room or vacancy enough; and therefore, without further examination or scruple, they knew they might turn to the right hand or to the left, to possess what they would to themselves.

II. This Vacancy, which gives us a right to plant, is to be considered in two respects, 1. Natural; 2. Civil: the first is in things which may be possessed, but actually are not, neither in property, nor use; such a Vacancy which is nullius in bonis, might be occupied by Switzers, who, as Casar saith, would fain have changed their rough Hills for some nearer Campania; and Defarts or places un-inhabited may be possessed and appropriated to the first Planter, and that without all controversie, but especially by those who being expulsed from their own Seats or Estate, seek enter-Tacitus Annal. tainment abroad : The Ansebarians in Tacitus, cry out, As

the Heaven to the Gods, so is the Earth granted to Mortals, and what is void is publick: Looking up to the Sun and Stars, they did openly as it were inquire of them, Whether they were pleased in beholding any ground empty, and without Inhabitants, they should rather cast forth the Sea, and over-

whelm the Spoilers of the Earth.

Whi nec possessio plene in poffeffione.

* De Jure Belli

ac Pacis, lib. 2.

сар. 2. §. 17.

III. Civil Vacancy, is where it is not absolutely incorest plene in ho- porated, as among the roving Arabians and Mores in Barmine, nec homo bary, and other Africans and Americans, who possess one place to day, and another to morrow; these by their frequent returns, shew that they abandon not the places they remove from, as derelicta qua quis in bonis amplius numerare non vult; we cannot fay, that their natural or voluptuary interest in them is no way improved; for Grotius seems to be of opinion*, That if there be some Defart or barren ground, the same ought to be granted to Strangers upon their request, and, fays he, It is also rightly seized on by them, giving this reason, For that Lands ought not to be esteemed occupied which are not cultivated; but only as to the Empire, which remains entire to the first People, they do no offence who inhabit; and manure a part of the Land that lyes neglected +.

+ Dion. Prufeenfes, Orat. 5. 14 1. 151-1

But we must press this Argument of Grotius very tenderly, left by the same reason others conclude, that those Estates which are not competently improved, are derelict and occupiable by others, which would introduce perpetual confusions, and easily perswade every man that he could

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could husband his Neighbours Lands better than himfelf: However this is a clear case for all Planters, that those Reste fasta est wastes, or asperi montes, which the Natives make no use concessio, que est of, nor can receive any damage by their being possessed by fine damno alte-

others, may lawfully be impropriated by them.

IV. Again, if a Nation or People should happen to be expelled out of their own Country, defire to feek void. places, or at least such as might not absolutely endamage a People into whose Territory they come, they may justly Bald. 3. Conf. plant; the reason is, for that Dominion or Property might 293. be introduced with a reception of fuch use which profits * * Serv. ad 7. fuch distressed people, and hurts not those; and there- An. fore the Authors of Dominion are supposed willing rather Littusq; rogato have it so, but to give away that which we have but a mus innocuum, bare right to and no possession, can neither be just in the tio, ait, nulli giver, nor lawful in the receiver. We have an eminent possit nocere. Example of this amongst the Turks; for the Tartars having over-run the North of Asia, and many Nations fled from their own Countries for fear of them, amongst other the Corasines, a warlike People, being thus unkennelled, they had their recourse to the Sultan of Babylon, and petitioned him to bestow some habitation upon them, their Suit, according to the Rules of Policy, he could neither fafely grant nor deny to admit them to be Joynt-tenants in the same Country which the possessed Turk would turn to a present inconvenience and a future mischief, and to deny them might perhaps edge their discontents into Matthew Paris, desperatenes; therefore instead of giving them Gold, he fol. 851. fent them to the Mines, yet so as they took it as a very great courtesie; for he bestowed on them all the Lands which the Christians held in Palestine, liberally to give away what was none of his, and what the others must purchase before they could enjoy: Sad was the donation; for by Matthew Paris virtue of that Conveyance they became Conquerors of fol. 834, 835. Jerusalem, and of the whole strength of the Christians.

V. But admitting that Planters may appropriate a Plantation for their living, whether fuch may dispose of the fame by Will (we supposing the Possessor having no Heir) for that he might feem to have but an usufructuary possession, till a descent had been cast, which then perhaps may turn the lame into a Right +: Without all controversie the ve + As it is con-

ry immediate possessing and planting creates a right against sonant to Na-Ccc 4

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VII

fhare of fubfi- all, but he that hath Empire there, and that very right flence, which the party in his life time might have actually transferred was before un- over to another. Now though the devise in the Will opecertain, should rates not till after his death, yet the gift is made during now be fixed, his life; according as the French have it, Se desponiller rythatthe con- avant que de s'en al'er coucher, that is, man first puts off his fent which o- cloaths, and then goes to bed.

thers gave to this at first, should stand fixed, especially if there was no obligation, or declaration at the first to the contrary. Vide Selden de Jure Nat. & Gen. ad men. Heb. id obligat. quod est ex officio quod legis est: But the fanction of a Law supposes the nullity of a state

of nature, not of a right of nature.

VI. Again, Persons having arrived in those Territories, and planted, but before they have reapt the fruits of their labour, necessity is found within their Huts, and a Supply of things for the support of humane life is wanting. whether fuch may feek the means of sublistence by the Laws of Nature, and in case of refusal (after request) force them from their Neighbour Planter? Surely that which is necessary for any natural subsistence, and necessary to another, belongs justly to me, unless I have merited to lote the life which I feek to preferve. There were a defect in Gods creating our natures, fuch as they are, if he did not provide means to uphold their beings, according to the natural faculties which he hath given them. A good Mother divides her bread among her Children, so as a morfel may come to each; let us therefore judge this case by those rules of Justice, by which we judge other cases: if a Father in his Will pass by a Child or names him, but upon false causes leaves him nothing, he is notwithstanding by the equity of the Civil Law admitted to a Childs part, a legitima, and may form his Action contra Testamentum inofficiosum. Men are all a Kin, and we derive one from ano ther, and to let others fettle in our places, who may justly expect as much due to them, for their natural fublistence, as was to those who before went out of the World, to make place for them, yea though they affign them nothing at their departure.

Man were of all living Creatures most miserable, if he might not during this life have that measure, which God would not have an Ox defrauded of; thus hath every Dunghil-fly a right to live, and to remain infectile, which

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besides existence hath sense, and may not justly be deprived of that its chiefest felicity, unless it be importunate to a nobler Creature.

VII. 'Tis very true that no man can pretend to share in the sweat of another mans brows, or that the pains and wasting of another mans life should be for the maintenance of any but his own; nay though it be granted, that those Neighbour Planters, who being fetled before us, and having acquired either by industry, or lawful donation the fruits of other mens labours, and confequently must enjoy xenophon in his more plenty than a new Comer or Planter, yet all that Answer to the they possess is not properly theirs; for if another by ex- Synopenses: Ubi treme necessity be perishing, and they have above what jus emendinobis they can confume in a natural way, then they have no ful five in Barbariler a property in that plenty than Stewards have, and for co, five in Grathis regard they are so called in Scripture: The Earth still canico solo ubi is the Lords, and the fulnes of it is his, for he made it of que opus sumihis own matter, and for the fashion of it used not our aid; yea, mus, non per vim, sed ex ne-tis his Sun which still produces, and his Clouds which drop fat cessiate. Exped. nes: We can only pretend the contribution of a little cris. pains for that which is our natural fhare; fo that in plain reason we may not expect to be otherwise qualified than Stewards, for all that which is not probably necessary for our own fubfillence, or for theirs, who fubfilt only by us: Wherefore Lazarus ready to perish (not by fault, but by missortune) had taken Dives his Crums, contrary to his will; yet he had not finned no more than'he who takes Leffius, lib. 2. fomething which the Lord or Mafter hath given him, cap. 12. dub. 12. though the Steward contradict it: But if it so happen, num. 70. that both the Planters are in pari necessitate, then melior est conditio possidentis; or as S. Paul's words are, when he excited the Churches Charity and Alms, for the relief of the distressed Members of Christ, Not (quoth he) that we should 2 Cor. 8. 13. be straitned, and they abound.

VIII. The will of those who first consented mutually to divide the Earth into particular Possessions, was certainly fuch as receded as little as might be from natural equity; for written Laws are as near as possible may be to be interpreted by that; and therefore in cases of such extremities we are not without examples, of taking the Goods of one Grotius de Jure to supply the necessities of many: And therefore at Sea, Belli ac Pacis, if Provisions begin to fail in a Ship, every one may be for-lib. 2. cap. 2.

ced 5. 7, 8, 9.

Leges humanæ obligant uti fa-Etæ funt, scilicet cum sensu bumanæ imbecillita-

ced to bring out openly, what he laid in for his passage in particular; so a Ship at Sea, having in stress of Weather, fpent her Sails, Cordage, and Anchors, meeting other Vef. fels at Sea, may take a supply of such as shall be wanting; but yet governed according to S. Paul's words, So that fuch taking straitens not the other Ship. So when the Sea breaks in upon a Country, we may dig in the next mans grounds to make a bank, without staying for the Owners permiffion, yea tear down any mans hedge, or fence, when the Common passage is stopped: For in such cases of necessity humane Laws (as is mentioned afore) do not so much permit as expound their natural equity, and that which men give to those who are so innocently distressed, who borrow life only from the shadows of death, Et pifta fe tem. pestate tuentur, is not properly a Charity to them as a duty; and if he be a Christian that gives, perhaps he doth more Charity to himself than to the Receiver.

IX. The reason of this Christian Charity, or Communion, is as far above the natural, as Christ himself was above Nature, this requires an equal beating of all pulses, that as Fellow-Members we have a homogeneal fense and palpitation; we are to divide a Cruse of Oyl, and a few handfuls of Meal, with one of Christs Flock, with an abandoned Creature; and what can be in more extremity than a poor Planter, in a strange place, destitute for the

prefent of the supports of humane life?

And furely the violation of this Jus Charitatis, is no less than theft, in those who having extended fortunes, never defalcate a Gibeonites Crust perhaps for a wandring Angel, these steal even the shipwrack'd mans picture from him, which as his whole inheritance he carried at his back, to move compassion, and by the insatiable Sea of their Avarice and Luxury, they wreck him over at Land.

X. But this free Primitive Communion had, and hath its bounds, and its quantum in Contributions, as well as the natural, otherwise it might be fraudulent, and thieving: For they who possess but a little, would contribute Bria, i nullus ex it all, on purpose to share equally with those who possess se metus autspes, very much, which would introduce a visible decay and & securi omnes ruine in all; as Tiberius rightly observed * on M. Hortalus his petitioning an Alms for Augustus Cafar's fake, Idlenes ignavi, o nobis would increase, and industry languish, if men should entertain

* Intendetur,inquit , socordia, languescet indualiena subsidia expectabunt, fibi

graves. Tacit.

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no hope, nor fear to themselves, but securely expect other mens relief, idle to themselves, and burdensom to us.

Wherefore in the midst of that primitive Communion, we find that the Apostles went domatim. from house to house breaking of bread, therefore they even then retained by their houses in property; which property is supposed by the eighth Commandment, as well as it is by Christian Charity: For no man can steal, but by invading the right of another; and as for Charity, it is necessary he have fomething of his own, to be able to fulfil its commands, and to make a dole at his door; and it is very convenient that he give it rather with his own hand, than by fome publick Collectors, For Charity is hated most with the sense of its Mat. 7. 11.

own action. Moreover under the Law, Tews were commanded to love one another as themselves; yet this Command

way now; notwithstanding we owne the use or usufruct of our properties to the distressed, though our selves be at the fame time in distress; just as we are commanded, by

took not away property then, therefore it takes it not a-

the peril of our own lives, to endeavour to fecure our Neighbours life, which is yet a Charity more transcendent than the other, by how much life is above a livelihood.

And though the various Laws of Countries have variously provided punishment for those, who out of meer necessity take something out of anothers plenty; yet that proves

not the act to be fin, or repugnant to equity or conscience, but rather repugnant to the conveniency of that Kingdom or Republick where the act is committed; and the true

reason of the same is, lest thereby a gap might be laid open to Libertinism; besides Reason of State, we know, con-

fiders not vertue fo much as publick quiet and conveniency, or that right which is ad alterum.

XI. We will now consider those things which are Gods, which yet are not his in fuch a strict rigorous fense, but that they lye open to the exceptions of our just necessities, hence that which is devoted as a Sacrifice to him, in case of necessity, may be made our dinner, witness the action of David: Wherefore the consequence of our Saviours answer was very strong, when he defended his pulling the Ears of Corn in anothers Field: That if it was lawful for David in his necessity to eat that bread, which was provi-

ded for the Table of God, then how much more was it

Decretals of Gratian, lib. Synodus Nicenensis Can. Synodus Aure-

tanum.

lawful for him and his Apostles in their necessities to take a refreshing out of that which belonged to man? By the Canon Law, if no other means can be found, the Veffels of the Altar may be fold to redeem those Souls who are en. thralled in mifery and Captivity; and is there not good rea. liacensis 1. can. fon for it, seeing they serve but for the Souls of Men, and concilium Tole therefore the Souls of Men are more precious than they? Yea the Sacrifice it felf, to what end is it, but to obtain

a state of piety for us?

Upon what hath been faid, it may not feem an injury, if a Planter (wanting those things for the support of hu. mane life) requesting a reasonable proportion of his Neighbour (having it to spare) with an intention to repay, if denied, by force take the same from him; for that reason which creates a punishment in a fetled Commonwealth for the like actions, does in fuch places fail.

Grotius de Fure Belli ac Pacis, lib. 2. cap. 2. S. 8, 9.

CHAP.

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CHAP. VI.

Of the Jews.

I. Cf considerations touching their various and several forms of Government down till their total extirpation.

II. Of their first coming into England, and when.

III. Of their flate and condition after their inhabiting here.

IV. Of their Priviledges and other Immunities in reference to their Monies and Charters.

V. Of their Chefts and Stars, and the manner of proceedings for the recovery of their debts.

VI. Of their Charters and Immunities, and of the confirmation of the lame.

VII. Of the confiquences and inconveniences that fell and were occafioned by reason of their Courts, as to the Ecclesiastical Cognizance.

VIII. Of their Power in erecting of Synagogues, and of the foundation of the House of Converts, now called the Rolls.

IX. Of their charter obtained of the Priesthood of all the Jews of England.

X. Of places totally exempted in England from their Society.

XI. Of the Endowment of their wives according to the Laws of the Jews, and of their power of Excommunication of each other.

XII. Of the real state and condition that they remained in, notwithstanding all their various and several immunities.

XIII. First, in reference to their persons, being obliged to wear Badges or Tables on their breasts, as notes of distinction, and having entred the Realm, could not depart without licence.

XIV. Secondly, as to their Estate, the same being solely at the will of the King; for at their death the same escheated, they could sue without leave or licence, the King might respite or release the same, and have nothing but what was solely at the devotion of the State, continued so till their total banishment out of the Realm.

I.S Ince the remainder of that mighty Nation, which of old were elected a People peculiar, are now by him that first chose them dispersed over the face of the Earth, and are become the most politick of Traders now extant, having by their industry cemented themselves into the principal Revenues and Trassick of the Universe, but more especially among those Nations who remain in darkness and in the shadows of death. It might not seem improper to examine how their condition stood of old in this Nation, what advantages and disadvantages they brought to this Realm, and how the Laws of the same stand in reference to that people at this day.

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At the first the Fathers of their several Families, and their first-born after them, exercised all kind of Government both Ecclesiastical and Civil, being both Kings and Priests in their own houses, they had power over their own Families to bless, curse, cast out, disinherit, and punish with death, as is apparent by Noah towards Cham, Abraham towards Hagar and Ismael, Jacob towards Simeon and Levi, &c. In Moses's days then did this Prerogative of Primogeniture cease; and as Aaron and his Posterity were invested with the right and title of Priests, so Moses and Joshua governed the people in a kind of Monarchical Authority.

After Joshua succeeded Judges, their Office was of absolute and independent Authority, like unto Kings when once they were Elected; but there were long vacancies and chasmes (commonly) between the cessation of the one and the Election of the other, yea for the most part they seldom chose a Judge but in the time of great troubles and eminent dangers, which being over-past, he retired to a private life, much symbolizing with the Roman Dictators, and continued with them according to the computation of some 329 years. In the vacancies or distances of time

Aug. de Civit. Dei, lib. 18. cap. 22.

and continued with them according to the computation of fome 329 years. In the vacancies or distances of time between Judge and Judge, the greater and weightier matters were determined by that great Court of the Seventy called the Sanhedrim, in which respect the form of Government may be thought Aristocratical, Kings succeeded the Judges, and they continued from Saul to the Captivity, that is about 500 years.

Usher.

From the Captivity unto the Coming of the Messiah, which is thought to have been 536 years, the State of the Jews became very confused, sometimes they were ruled by Vicegerents, who had not Supreme Authority in themselves, but as it pleased the Persian Monarchs to assign them, they were called Heads of the Captivity, of which was Zorobabel and his Successors down to Hosodia, which were thought to have been of the Posterity of David; so likewise the other succeeding ten Chief Governours under Alexander the Great, in the last of those ten Governments departed from the House of David, and was translated to the Maccabees, who descended from the Tribe of Levi, and from them the Soveraign Authority continued to Herod the Askalonite his Reign, at which time our Saviour Christ

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was born, according to Jacobs Prophecy: The Scepter shall Gen. 49. 10. not depart from Judah, nor a Law-giver from between his feet until Shilo (that is, the Messiah) shall come; which Scepter was given to Judah, that is, to the Twelve Tribes from the time of Moses, and that it was taken fully from * A Tew is a them in Herods time, and given to him who was a * Pro- name of profelyte, and no ways descended from that holy stock, for fession, not of fuch was Herod.

Their condition fince the extirpation of their Common- Scaliger ex quo wealth, and their dispersing over the face of the whole casaubon. adv. Earth, after the facking of their Metropolis, is fully re- Baron. pag. 19. lated by Josephus, Eusebius and others, and what condition 39. and how used in most Nations they have been since then, is

fully illustrated by Helyn in his Microcosm.

II. When they came first into this Realm is not certainly related by any of the Historians in their Writings of the British or Saxon Kings Reigns; however this certainly appears, that William the Conquerour translated the Jews in Holinshed. Vol. Roan, from thence to London ob numeratum pretium, for a 3. pag. 15. fumm of Money given by them to him, who accordingly appointed them a place to inhabit and trade in, which being assigned them, they were under the Protection and Patronage of the King, and as his meer Vassals, their persons and Goods being his alone, and that they could dispose of neither of them without his Licence; and this appears by that ancient Law related by Sir Henry Spelman. concil. 623.

Country or Nation. Foseph.

Fol. 568, 569.

De Judais in Regno constitutis.

Cliendum est quoque, quod omnes Judæi ubicunque in Spelman concil. D Regno Cunt, sub tutela & defensione Domini Regis 623. fant; nec quilibet eozum alicui dibiti se potest subdere fine Megis licentia, Judæi, gomnia fua Megis funt. Duod st quisquam detinuerit eis pecuniam suam, perquirat Ker tanquam flum proprium, (or detinuerit eas, bel pecuniam eozum, perquirat Ker, ft bult, tanquam fuum pzopzium) as Sir Henry Spelman renders it.

III. These people after they had planted themselves in this Isle, and being thus protected, drove on the Trade and Traffick of the same with a mighty hand to such a height, that by the end of King Russ's time they became

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Joh. Brompton, Col. 1048.

Gervafius Dorobernensis in his Chronica, Col.

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Matthew Paris. fol. 641. Rot. Pat. 41 H. B. m.4. num.6. Cok. 4. Instit. fol. 254.

7eh. Brompton. Collect. 1258. Hollin hed, Vol. 3. pag. 155.

powerful, rich and numerous, and to that degree so zealous for their Religion, that they not only held open Dif. putes, but endeavoured to bring over by Monies the poor and needy to be of their opinion. So high and infolent were they grown up in a short time, which continued till King Henry the Second's Reign, at which time their condition became a grievance to the Nation by reason of their oppressions, murders, and insolencies, which that King taking into consideration, banished the wealthiest of them. and the rest he fin'd at 5000 Marks. The most pernicious act of murder which they were accused of was, that generally on a Good Friday they would, if possible, get a Fox, Vol. 1. fol. Child of Christian Parents, and crucifie him in derision of his Religion.

> IV. King Richard after his return from the Holy Land taking into confideration the necessities and straits that that expensive Expedition had reduced him, and being desirous to reduce the Monies and Estates of the Jews into fuch a condition, as if necessity should compel him to feize on the whole; but before the fame could be done, it was propounded that the King declaring his being fensible of the state and condition of the Jews, a mean might be found out for the fetling and peaceable driving of Commerce between the Christians and them; whereupon Judges were appointed to hold Courts touching the Government of the Jews, and their Commerce was appointed out in these words:

> All the Debts, Pawns, Mortgages, Lands, Houses, Rents, and Possessions shall be registred, the Jew who shall conceal any of these, shall for feit to the King his body, and the concealment, and likewise all his Possessions and Chattels, neither shall it be lawful to the Jew ever to recover the concealment, also fix or seven places shall be provided, in which they shall make all their Contracts, and there shall be appointed two Lawyers that are Christians, and two Lawyers who are Jews, and two legal Registers, and before them and the Clerks of William of the Church of S. Maries and William of Chimilli shall their Contracts be made, and Charters thall be made of their Contracts by way of Indenture, and one part of the Indenture shall remain with the Jew sealed with his Seal, to whom the money is fent, the other part shall remain in the Common Cheft, wherein thall be thee Locks and

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theps, whereof the two Christians shall keep one thep. and the two Jews another, the Clerks of William of St. Maries Church and William of Chimilli thall ken the third; and mozeober there fall be thee Seals to it, and those who keep the Seals shall put the Seals thereto. Mozeober the Clerks of the faid William, and William thall keep a Koll of the Transcripts of all the Charters. and as the Charters shall be altered so let the Moll be likewise; for every Charter there shall be 3 d. paid, one morety thereof by the Jeto, and another morety by bim to whom the mopety is fent, whereof the two writers fiall babe 2 d. and the Reper of the Roll the 3 d. and from henceforth no Contract shall be made with, nor any papment made to the Jews, noz any alteration made of the Charters but befoze the faid perfons oz the greater part of them, if all of them cannot be prefent, and the afores faid Christians shall babe one Koll of the debts and receipts of the payment which from benceforth are to be made to the Jews, and the two Jews one, and the neever of the Roll one. Pozeober every Jew Chall twear upon his Koll, that all his Debts and Pawns, and Kents, and all his Gods and Bollettions he thall caute to be enrolled, and that be shall conceal nothing, as is afozefaid; and if be thall know that any one shall conceal any thing, be hall tecretly rebeal it to the Justices tent unto them, and that they shall detect and shew unto them, all falisters and forgers of Charters, and clippers of Monies, when and where they hall know them, and likewife all false Charters.

V. This Chest was called Arca Chirographica, or Chirographorum Judaorum, and the Notaries and Registers of them stiled, Chirographi Christiani and Judai Arca Chiro- See Purchas's graphica London, Oxon. or other such City where such 1.2. c.10. §.7. Chests were usually kept, all their Deeds, Obligations, and Releases were usually called Stars and Starra, Star It's conceived rum, Star in our Latine Records, from the Hebrew word the Star-Cham-(as Mr. Selden observes) Shetar (contracted by the omission berwasthe old of He) which fignifieth a Deed or Contract. These Stars Receipt where were for the most part writ in the Hebrew Tongue alone, the Chest for westminster re-

mained with the Stars of that City, and not so called, as is mentioned co. 4. Infl. 65: Some of them are now extant in the Treasury of the Exchequer in King Johns Reign.

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or elfe in Hebrew on the one fide or top of the Parchment. and in Latine on the other fide or bottom of the Deed af.

ter the Hebrew.

If any Christian became indebted to any few by such Star or Writing put up and referved in this Cheft, and paid not his Money at the day appointed, together with all the Interest where any Interest was reserved, then he sued forth Letters by way of Process against him both for the Debt and Interest under the Notaries or Registers hand, to appear before the Jultices especially appointed for the Government and Custody of the Jews to recover the same ; but yet such Jew could not obtain such Licence till Vide FineRolls he had paid a Fine to the King for the obtaining of fuch Letters, unum Basantum, viz. Besantum for every pound, H. 3. & Ed. I. and fuch Sears were in the nature of Judgments, upon which extents were fued forth, and the Lands of the

6 7ohan. m. 17. and likewise in

memb. 5.

Pat. pars 2.

W. J.

An. 3. Hen. 3.

Debters were seizable notwithstanding, in whose hands * Fines 9 John foever they came, after the Star was entred into *: And if it happened, that any persons denied their Deeds, or any Controversie did arise upon which there was any Tryal, the fame was by a Jury half of Christians, and the other of fix legal Jews.

Such Stars or Chest-Judgments were assignable to Christians, together with the extents upon them, and the Assignee might vouch over the Assignor to Warranty in fuch case. So likewise to the King they might assign over

Debts to pay their Taxes.

VI. As this Politick Prince had provided this mean for the discovering of their Estates, so did he from time to time award Commissions to Justices for the Tryal of Caufes and Controversies that arose between Christian and Few, and granted them divers Liberties and Priviledges, which afterwards were confirmed by these two ensuing Charters of King Fobn.

Chart. 2. 7oh. n. 49. Charte Judgorum Anglie.

TOhannes Dei gratia, &c. Sciatis nos concestiste om nibus Judzis Anglia e Normania, libere e bonorifice habere refidentiam in terra noftra, e omnia illa de noftri; s omnia illa quæ modo rationabiliter tenent in terris s leodis, a badijs a akatis tuis: e quod babeant omnes libertates a confuetudines was ficut eas habuerunt tem poze pzedicti Kegis H. Abi patris noftri, melius e qui's

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tius e honozabilius, Et ff querela ozta fuerit inter Chaiffi anum e Judæum, ille qui alium appellaberit ad querelam mam dirationandam, habeat Teffes, scilicet legitimum Christianum e Judæum. Et ff Judæus de querela qua Brebe habuerit, Brebe fuum erit ei testis. Et ft Chris stianus habuerit querelam adbersus Judæum fit fudicata per Pares Judæi. Et cum Judæus obierit, non detineas tur cozpus fium super terram, sed habeant homines pecuniam fuam e debita fua, ita quod mibi non diffurbetur, ff habuerit hæredem qui pzo ipfo respondeat a rectum faciat de debitis luis e de fozisfacto luo: Et liceat Judais oms nia que eis apportata fuerint fine occasione accipere a emere, erceptis illis que de Eccleffe funt a panno fanguine lento. Et f Judæus ab aliquo apellatus fuerit fine teffe, de illo appellatu erit quietus tolo Sacramento fuo super libzum fuum, s de appellatu illarum rerum que ad Cozonam noftram pertinent, fimiliter quietus erit folo Sacramento fuo fuper Kotulum fuum. Et ff inter Chzis stianum g Judæum fuerit dissentio de accommodatione alicujus pecuniæ, Judæus pzobatum Catallum fuum, e Christianus lucrum. Et liceat Judzo quiete bendere bas dum, postquam certum erit, eum illud unum annum e unum diem tenuiste. Et Judæi non intrabunt implacitum, nift cozam Pobis, aut cozam illis qui Turres noftras cuftos diering, in quozum Ballibis Judæi manfering. Et ubis cunque boluerint, cum omnibus Catallis eozum ficut res noffræ pzopziæ, a nulli liceat eos retinere, neque boc eis Probibere. Et præcipimus quod ipft quieti fint per totam Angliam & Normaniam de omnibus Consuetudinibus & Abeolonijs a modiatione bini ficut nostrum proprium Cas tallum. Et mandamus bebis e piæcipimus quod eos cus Rodiatis, a defendatis, a manusteneatis, a probibemus nequis contra Chartam istam de his supradictis eos in placitum ponat fuper fozisfaduram noftram, ficut Charta Megis H. Patris noftri rationabiliter teftatur. Tefte T. Humf, filio Petri Com. Effex. Willielmo de Barefcal. Com. de Pembr. Henr. de Bohun Com. de Hereford. Robert de Turnham , Willielmo Brywer, ec. Dat: per manum S. Well. Archidiac. apud Marleberg, decimo die Aprilis, Anno Regni nofiri fecundo.

Chart. 2 7ohan. n. 53. confirmatio Judeorum de Libert. fuis.

TOhannes Dei gratia, &c. Sciatis nos concessiste, e pexfenti Carta noftra confirmaffe Tudzis noftris in Anglia, ut erceffus qui inter eos emerferint, erceptis bijs qui ad Cozonam e Juftitiam noffram pertinent, e de moze te hominis e mabemio, e de affaltu præmeditato, e de fra dura domus, a de raptu, a de Latrocinio, a de Combustio ne, e de Thefauris, inter eos deducantur fecundum Legem fuam, & emendentur, & Juftitiam fuam inter feipfos fa Concedimus etiam eis, quod ft quis eogum alium appellaberit de querela que ad eos pertineat, Ros nemi nem compellemus ad tellimonium cuiquam eozum contra aliumerbibendum, fed ff appellatoz rationabilem q ide neum teltem babere poterit, eum fecum adducat. Di quod beroopus feleratum gapertum inter eos emerferit qued ad Cozonam noftram bel ad Justitiam pertineat; ficut de prædictis Placitis Coronæ, licet nullus eozum nofter and pellatoz fuerit, Ros iplam querelam faciemus per Legales Judæos noftros Angliæ inquiri, ficut Charta Megis H. Patris noftri rationabiliter teffatur. Aefte G. filio Petri Com. Effex, Willielmo Marefchallo Com. de Pembr. Hen. de Bohun Com. de Hereford, Petro de Pratell. Roberto de Turnham, Willielmo de Waren, Hugo de Nevil, Roberto. de Veteri Ponte. Dat, per manum S. Well. Archidiac. apud Merleberg decimo die Aprilis, Anno Kegni nofini fecundo.

Cok. 4. Inflit. fol. 254.

VII. This Court being thus erected for the Government of the Tews, under the colour of the fame there were many evalions found out to avoid the punishments which they justly acquired for their several delinquencies; and therefore when any of these Jews were convicted before any of the Ecclesiastical Judges for offences against an Ecclesiastical person, or for Ecclesiastical things, or for Sacriledge, or for laying of violent hands upon a Clerk, or for Adultery with a Christian woman, the Conusance of the cause was always avoided by the Kings Prohibition, because (as was alledged) they had their proper delegated Judges who should and ought to have Conusance of fuch things; fo that if a Jew happened to be convented before the Judges assigned for such things, upon denial of the same by the person alone, the simple affertion of another

Matthew Paris additamenta. fd. 202, 207.

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Few and of one Christian without the administring of any Oath, they might have purged themselves, the proof of the Profecutor being utterly rejected.

VIII. By the Canon Law no Jew could build or erect a Decret. Gratian Synagogue; for if they did, the same was seizable into lib. 5. the Crown: the like was so done in the Year 1231. when Junus Concil. they had erected and new built a curious Structure for a Synagogue, the fame was taken into the Kings hand *, and * 70hn Stoms dedicated to the Bleffed Virgin, and afterwards granted Chron. fol. 182. to the Brethren of St. Anthony of Vienna, and called St. Anthomes Hospital; but yet an old † Synagogue they might † Decret. Gra-

repair.

King Henry the Third finding that many of the Jews Matthew Paris were converted to the Christian Faith, but yet were not. Hist. Angl. fol. withstanding persecuted by their Brethren, erected a con- 393. venient House and Church, with all necssary accommodations , and called it by the name of the House of Con- be the Rolls in verts, in which place, if any would live a retired life, chancery lane. they had all accommodations granted them for their lives, which place continued a House of Alms and Receptacle for the converted Fews conflantly down till 18 Ed. 3. and then there proved a failure of fuch Converts, and the place became empty and ruinous; whereupon that Prince in the eighteenth year of his Reign granted the same House to other poor people who had nothing to live on, with the benefit and accommodation of the Gardens and other things, and an alms of 1 d. a day out of the Exchequer to each poor person: which place one William de Bunstat being made Guardian of, and likewise at that time Matter of the Rolls, afterwards obtained of that King to annex the same House and Chapel of the Converts to the Master 51 E. 3. m.20. of the Rolls and his Successors for ever.

The Constitution of this Society (when it was in being) 4. concil. Tolewas purluant to the Canon Law; for by that it was de- do, can. 59, creed, reciting: That in regard the companies of evil men 61, 62. do oftentimes corrupt even the good, how much more then those qu.1. & 29.0 who are prone to vices? Let therefore the Jews, who are con- qu. 1. verted to the Christian Faith, have no further communion henceforth with those who still continue in their old Jewish Rites, lest peradventure they should be subverted by their Jewish Society, Therefore dete decree, That the Sons and Daughters

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of those Tews who are baptized, and that do not again involve themselves in the Errours of their Parents, shall be separated from their company, and placed with Christian men and women fearing God, where they may be well instructed, and grow in Faith and Christian manners. And further by the same Council it was decreed, That if a Jew (hould have a Wife converted to the Faith, they should be divorced, unless upon admonition the Husband would follow.

Rot. I. Reg. 70bannis, part I. m. 28. Chart. 17. Vide Co. 2. Inft. fol. 508. the fame at large.

IX. However these people having got footing for their persons, soon obtained Licence notwithstanding against the express Canons, not only for the erecting of Synagogues, but also obtained a Charter whereby was granted to one James of London a Jewish Priest the Priesthood of all the Tews throughout all England to babe and to bold it during bis life freip, quietly, bonourably and intitely, without moleftation, trouble, oz diffurbance by any Jeto oz English man in the exercise thereof, &c. And in the very close of the same there is also granted, That be should not be impleaded for any thing appertaining to him but only before the ming bimfelf oz bis Chief Justice. This Charter was made at Roan from whence the Conquerour first trans planted these people into this Realm.

X. And though they obtained footing in most of the great places of England; yet some there were who obtained fuch favour as to be exempted of their Company, as claus 18 Hen. 2. New-castle, to which Corporation it was granted, That no Few from thenceforth should remain or reside in their chart. 18 H.3. Town during the Reign of King Henry the Third or his Heirs; fo likewise they of Southampton, Winchelley, Wicomb,

Newberry, Berkhamsted, and other places.

If a Jew dyed and left an Infant, the House did escheat to the Crown, until the same was redeemed by the Heir at full Age, and in the interim the King might grant the fame till he came of Age, together with all his Goods, Chattels, Lands, Tenements and Hereditaments, and then upon payment of their Fines they had a special Writ of Restitution awarded to give them actual possession.

XI. By the Laws of England if a man dyed leaving iffue divers Sons, the Lands descended to the Eldest; but a few Selden de successionibus apud dying, leaving issue divers Sons, after the Fine paid to Hebrans, c. 20. the King, they all inherit Lands, Goods and Chattels in

Clauf. 5 H. 3. m. 17. de dom. Fudeorum.

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a kind of Copercenary *. So likewise by the Law of the * But that was Realmif a Jew dyed seized of Lands, his Wife could not by the estaby the Common Law, bring a Writ of Dower; yet she blishment of might bring a Plaint before the Justices assigned for the the Justices ap-Tems in the nature of a Writ of Dower, and should there lews. recover, nevertheless subject to answer the King a Fine, nav though the Husband was converted to the Christian + cok. I. Infl. Faith †.

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fol. 31, 32.

Clauf. 28 H. 3. m. 4. dorfo. Clauf. 36 H. 3. m. 26. pro quadam Judez.

The power of Excommunication was granted the 7ews 34 H. 3. M. 3. to excommunicate any of their own Profession; but the

fame could not be done by them without Licence.

XII. Notwithstanding all these Priviledges and indulged Liberties which were granted to them by those Kings from the Conquerour to that their Fatal year in 18 E. 1. yet they were in no other condition but most absolute Bond-flaves and exquisite Villains; for their names were inrolled in the Kings Exchequer for the Jews, and they 26 H. 2. m. 6. confined to live and abide only in fuch places as those several Kings or their Justices assigned for their Custody, should prescribe and allot them, from which they might not remove without special Licence, but always be resident, that fo the Kings Officers might on all occasions find both them and their Families, and then as often as the Kings pleasure was, were they translated from place to place, and not fuffered to have any habitation but where they had a common Chest, and where Taxes were impofed on them, or debts were owing from them to the Crown, their persons, Wives, Children, Infants, Families were imprisoned, and sent to remote places and Caftles, nay banished, executed, and put to Fines and Ranfoms upon all fuch occasions as those Kings thought fit, they were fold either person by person or in whole sale as Bond-flaves or Villains in gross by the King, and mortgaged to those who would accept them as a Pledge, or otherwise advance any Monies upon their Assignment.

XIII. And that they might be distinguished from o 2. Clauf. 2 H.3. thers, they were obliged always to bear a Badge and Ta- m. 10. dors. ble on their outmost garments, as well Females as Males, where-ever they rode or went, to distinguish them from Christians, with whom they were to have no intimate Ddd 4

communion, nor could the Christians be Servants or Nur. fes to the 7ews in any kind, their state and condition being fuch, that they were all of them meer Slaves and Servants

to the King in one kind or other.

When they had entred the Realm, they were absolutely prohibited to depart without special Licence, the which they hardly and but feldom could obtain; and if they at. tempted it, the which they iometimes would do to avoid the heavy Taxes that were laid on them, they were imprisoned and put to severe Fines and Ransoms.

Clauf. 15 Fob. memb. 13. Fine 7 H. 3. mem. 2. pars I. Ebor.

XIV. As for their real and personal Estate, it was wholly at the disposal of the King; for he might seize all their Lands, Houses, Rents, Annuities, Fees, Stars, Mort. gages, Debts, Goods and Chattels whatfoever, and fell, grant, release, and give them to whom he pleased at his pleasure.

Clauf. 5 Hen. 3. Judaorum.

At their deaths their whole Estate, both real and perm. 17. de dom. fonal, escheated to the King; neither could their Heirs or Executors, Wives and Kindred have or enjoy them without making Fines, Releases, and Compositions with

the King for them.

And when they had occasion to fue or implead any perfon upon any account, real or perfonal, they could not proceed till Licence obtained, which always was upon Fines made; and those very Actions after they were commenc't he could stay, and the very debts which they prosecuted for, he might respite payment of Principal or Interest, and give what time he pleased, nay he could not only lower or lessen the summs mentioned in their several Charters, but he might release them for ever; and though the King might pardon or release a debt, yet he might notwithstanding revive * the same. And those publick Chests, the common Repository of all their Fortunes, they often feized and fealed up the fame, and disposed what of them they pleased to the Kings own use, notwithstanding their Charters and Grants of Priviledges, nay forced them fometimes to tax and distrain one another under pain of perpetual Imprisonment, Banishment, Confiscation of all their Estates; and the most severe Penalties that could be inflicted, they living purely under an uncessant and arbitrary will of those several Kings; and that which was the more to be admired, that if they turned Christians; they imme-

Clauf. 7 Fohan. Reg. m. 26. Clauf. 9 Johan. Reg. m. 5, 6. 6.

* Clauf. 35 H. 3. m. 5. dorf.

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immediately upon their Conversion forseited all their Hillar. An. 52 Estates to the Crown. At length King Edward the First H. 3. Rot. 9. having fought all ways that might be to reform the exor- in the Exchebitant usuries and oppressions which they daily commit- quer. ted, did through the earnest sollicitation of the Commons publish an Edict in Parliament for their total and universal banishment, which accordingly was done, and the King at that time fent his Letters and Letters Patents to feveral Sea-Towns, reciting, That he had prescribed a certain time for their departure out of the Realm, commanding them not to do, nor fuffer any wrong to be done them, but to grant them speedy passage at their own Col. 2. Inflit. costs and charges. After which prefixed time, if they fol. 507. were found refiant within the Realm, they were hanged *, and some of the Rents and Profits of their Houses * Matth. Weltm. were disposed to pious uses, but all were generally seized Flor. Hist. An. into the Crown, and disposed and fold to the English by fol. 381. feveral Grants and Sales under the Great Seal of England. Thus these people having by their extraordinary usury, In the 20-year extorsions, and oppressions reduced themselves to be de- of Ed. 1. there fpisable, and then banished, and that by a people too with endorsed charwhom if they had continued in love and friendship, and Litera Patentes improved their Fortunes by the rules of moderation, they de domibus 74in all probability might have continued and flourished, deorum concessis they having from the several Kings, from the Conque- polt corum exirour down to their Fatal year, as many large Patents of lium de Anglia. Liberties and Franchises granted them , as ever were dred particular granted by any Christian Prince or State since the extir- Patents of the pation of their Commonwealth.

But notwithstanding this, yet Commerce and Traffick Houses. having now taught them a more exquisite way of enriching themselves, than by that cruel and biting Trade of Usury, they have now got footing into the Realm, and do now flourish in as high a manner as of old, (though it is hoped not in that manner for which they justly procured their total Banishment out of the same) and since time hath been so kind to them as to destroy those Rolls and Monuments of their former Cruelties and Oppressions, and where their Banishment was recorded, (there being no other footsteps of the same, nor of any other before & Ed. 2. to be found, they being totally lost; yet there are other Records that have sufficient Recitals of

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the same as well as History to evince the truth, if in the least contradicted) it is hoped that if they continue in the Realm, that they will by their constant actions consult and do such things as may stand with the honour, justice, and good of the Kingdom.

CHAP.

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CHAP. VII.

Df Berebants.

I. Merchandizing, the same is honeurable and profitable both to Prince and State.

II. The Advantages that might accrue to Kingdoms, if the more Noble and richer fort applied themselves to the same.

III. Of the first Institution of the Company of Adventurers.

IV. Of the Institution of that in England to the Indies.

V. Of the forming of that in Holland to those parts.

VI. Of the forming the like by the most Christian King to the same parts.

VII. Of the advantages and disadvantages considered, in reference to reducing them to Companies.

VIII. How Merchants in England were provided for of old.

IX. Of their Immunities setled by Magna Charta.

N. Of Merchants Strangers, whose Prince is in War with the Crown of England, how to be used in time of War, and the reasons why Merchants Strangers ought to be used fairly.

XI. Goods brought in by them, the Monies raised how to be disposed, according to the Statute of Imployment.

XII. Merchant-Strangers, made Denizens by Parliaments, or Letters Patents, to pay as before they were so made.

XIII. What things requisite that make a competent Merchant according to Law.

XIV. One Merchant may have an Account against his Partner, and if he dyes, no Survivorship to be of the Estate belonging, or acquired in their Traffick.

XV. Of the Immunities which they claim by the Custom of Merchants, in reference to Exchange.

XVI. All Subjects are restrained to depart the Realm, but Merchants.

XVII. Prohibitory Laws bind Foreigners, according to the Leagues of Nations.

XVIII. The necessity and advantage that is incumbent on Merchants to preserve their marks.

Here are certain affairs which should be left to the poor and common people to enrich them, but there are others which they only can execute which are rich; as that at Sea by way of Merchandizing, which is the most profitable in an Estate, and to the which they should attribute more honour, than some do here at this day. For if in all Estates they have thought it sitting to invite the Subjects by honour to the most painful and dangerous actions, the which might be profitable to the Publick; this being

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I. Here are certain affairs which should be left to the poor and common people to enrich them, but there are others which they only can execute which are rich; as that at Sea by way of Merchandizing, which is the most profitable in an Estate, and to the which they should attribute more honour, than some do here at this day. For if in all Estates they have thought it fitting to invite the Subjects by honour to the most painful and dangerous actions, the which might be profitable to the Publick; this being

Polit. 6. Mare & classem in Thucydidem. ad Lacedamon. fidio fit as fuiffe

Prater mercatu- being of that quality, that they should attribute more ho-Te usum Naves nours to those that deal in it : And if Nobility hath taken res militari, & its foundation from the courage of men, and from their ri contra exter-valour, there is certainly no vocation in the which there nam vim reipub. is so much required as in this; they are not only to eninfervire cape- counter and strive amongst men, but sometimes against the runt, Ariflot. 7. four Elements together, which is the strongest proof that can be of the resolution of man. This hath been the ocbello effe tute- casion that some have been of opinion, that they should lam reipub. ait open this door to Merchants to attain to Nobility, fo as the Tacitus 5. Hiff. Father and Son have continued in the same Trade, and to class. Imperii fusser Noble-men, who are commonly the richest in an cant Atheniens- Estate, to practise themselves (without prejudice to their um legati and condition) in this of Commerce; the which would be more honourable unto them than to be Usurers and Banlib. 1. Historat. kers, as in Italy; or to impoverish themselves in doing nofortunas Grecia thing but spend, and make consumption of their Fortunes. in navium pra- and never gathering or laying up.

prædicant, ejus rei muri lignei Thernistoclis abunde fidem fectrunt, idem experientia satis bodie loquitur. Inde Cosmo Medicao familiare fuit dictum, Non habendum potentem qui potentiæ terrestri, non simul etiam navalem haberet conjunctam. Et Hispanorum est adagium, Regnum fine portu esse ficut furnum absque igne : Praterquam quid navigationes cultui vita. & artium traductioni Coloniarium valetudine, & voluptati ferviunt.

> II. Hence will grow many advantages both to the publick and private: To the publick, for that they that should deal in Commerce, having means, courage, and sufficiency for this conduct, it would be far greater in the furnishing more Ships to Sea, and better armed, the which the State at need might make use of for the safety of the Publick, and would add to the reputation of the Nation in all parts, they knowing that an indignity or damage offered to fuch, would require fatisfaction with a strong and powerful hand; the which they cannot do, who being poor, and having but fmall stocks, or what they borrow from Bankers, or are indebted for the Cargo which they fend forth, have not the courage to hazard themselves and their All in an enterprize that is great. Besides, such who have honour, riches, and courage, would keep up the reputation of their feveral Commodities, by the not leffening the Market, the which the poorer fort, to pay Customs, Freight, Bills of Exchange, and other contingent and necessary charges,

charges, which accompanies the importing and exporting. are often forced to mortgage the Cargo to the Bankers at excessive usury, or else to sell for ready money, for an inconsiderable gain; nay some rather than their wants be known, for ready money will fell for loss: all which would be prevented, if fuch persons of value would apply themselves to a prudent management of the same; for whatfoever hazard they run, there would be more gotten by fuch in two Voyages, than the smaller fort in three or four Voyages, and by that means it would be the occafion of preventing many expences, or importuning their Prince with demands, nay perhaps they might get more at Sea in one year than in ten at Court. Besides, experience hath taught, and doth daily manifest, that where the richest have dealt in this of Commerce, it hath enriched both them and the State under which they lived : and at this day the Examples of the Venetians, Portugals, Spaniards and Hollanders have made it known unto us.

III. The confideration of which first gave light to that industrious Nation the Burgundians, to procure the Association or Incorporation by John Duke of Brabant, of that ancient Company of the Adventurers, Anno 1248. which were then called the Brotherhood of St. Thomas Becket of Canterbury; which being afterwards translated into England, was by Edward the Third confirmed, and by his Successors Henry the Fourth, Henry the Fifth, Edward the Fourth, Henry the Sixth, Richard the Third, and King Henry the Seventh, who gave them the name of Merchant Adventurers, and from him successively hath their Charter been confirmed down to and by his Sacred Majesty that now is; and as this Society is of ancient estima-

tion, so is their Government very commendable.

IV. The Society of the Company, trading to the East-Indies, differs from others, both as in reference to the Persons and Members which are at this day many of the principal Nobility of England, as also for that their Adventurers run all into many Stocks, and is governed and carried all joyntly upon benefit and loss, they were incorporate Anno 1599. and since they surrendred their Charter, and accepted a new one; and are incorporated by the name of Governour, and Company trading to the East-Indies; their Adventurers run all into one general Stock,

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and is governed and carried on upon benefit and loss; the fame being at this day, according to the Subscriptions. about four hundred thousand pounds, which the several persons Subscribers may sell, transfer, and dispose of; but they can no ways take out the fame : The great Stock may be increased, if the Company shall see occasion so to permit: but they are very cautious of the same, for that the greater the dividends, the more reputation the Stock bears, which above all things is to be maintained; however directly upon his own account, no person can have above ten thousand pounds Stock there, nor can he have a compleat title, till he is made a Free-man of that Society; their returns are very profitable, and of late very rich, and have many Places of great importance in India, as Meslopotam on the Coast of Cormendel, Bombay, Surat, Fort of St. George, Bantam, &c.

V. The Dutch having found relief in their distress from the British shore, against their powerful Enemy, found also a pattern to carry on Commerce, they not being wanting in the imitating the Incorporation of a Company, trading to those Places which they possessed in the East-Indies; and therefore in the Year 1602. leave was granted from the States to traffick into those Parts before all others, during the space of one and twenty years, the which was granted them, in consideration of five and twenty thousand Florins, which they promised to pay to the States during the first ten years; thus reduced all into one Company, Amsterdam had one moity, Midleburg in Zealand a fourth part, Delph, Rotterdam, Horne, and Enchusen had each of them a fixth part, the whole Stock of this Union amounting to fix millions of Livres, or six

hundred thousand pound Sterling.

For the direction of this Trade, and the Interests of the Associates, they have established, in either of those Towns, a certain number of Administrators, at Amsterdam twenty, at Middeburg twelve, in either of the rest seven; and if any one dyes, the Chamber of the Place names three, of which either the States General, or the Magistrate of the Town chuseth one.

Those Chambers chuse Seventeen among the Administrators, that is to say, Amsterdam eight, Midleburg sour, Delph and Ratterdam two, Horne and Enchusen two; and

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the Seventeen are chosen alternatively, fometimes at Midleburg, fometimes at North-Holland, the which are called together to resolve joyntly of how many Ships, and of what Equipage and Furniture they shall make the Fleet, which they mean to send, and to what Fort or Coast they should go. This Assembly is held six years together at Amsterdam, and asterwards two years at Midleburg, and then again at Amsterdam; by the Conditions of the Accord the Ships must return to the same Port from which they parted; and the Spices which are left at Midleburg, and other Chambers, are distributed amongst them by the weight of Amsterdam, and the Chamber which hath sold her Spices, may buy from other Chambers.

By this Order * they have hitherto continued this Com- * There are merce with reputation, not as simple Merchants only, but now some vassif they were Soveraigns, they have made in the Names rlations.

as if they were Soveraigns, they have made in the Names riations. of the States, Alliances with many of the Princes of those parts; as with the Kings of Sian, Quadoen, Patam, Johor, the Heir of Mataca, Bornean, Achin, Sinnatra, Baretan, Jocotra, and other Kings of Jatta; they have made themfelves absolute Masters of the Island of Amboyna, but by what means? Where they have a President who governs in their name; at Banda they have a Fort for a retreat, where they must deliver the Spices at a certain price; in Trinate they have another a mile distant from that of the Portugals; at Magniene they have three; at Motire one; at Gilolo they have taken that which the Portugals have built; and indeed what soever either can, or may consist with their interest in those parts, they have ingroffed, and by that means almost the Trade of the whole Spices of the East.

VI. So likewise the most Christian King hath within few years established such another Trading to those Eastern

Parts.

And in England we have several others, as that of trading to Turkey, that of Africa to Guiny, and several others, dividing the several Trades according to the Coasts and Places where they are appointed, forbidding them to intrench or incroach on each other; so likewise to all other his Majesties Subjects, on severe penalties.

VII. Now it is not the dividing of the Trade into Companies, that can answer the expectation, but it is the di-

viding

viding the Trade into Companies, where the Places may bear it; as that to the Indies, Turkey, Hamborough, and fome others: But to some others, as the Canaries, France, or any of those places on this side the Line, it has been conceived, the Trade will not answer it, but the same would be better distributed, either into the Trade of vo. luntary Associations, or single Traders; others perhaps would refult into Monopolies, if incorporated; however the Standard rule is, to know whether the Trade of the

Place will bear a Company, or not.

It is Foreign Trade that is the main Sheet-Anchor of us Manders, without which the Genius of all our useful studies, and the which renders men famous and renowned, would make them useless and insignificant to the Publick, when man has fathomed the bottom of all knowledge. what is it, if not reduced to practice, other than empty notion? If the Inhabitants of this Island were learned in all the Languages between the rifing and fetting of the Sun, did know and understand the situation of all Places, Ports, and Countries, and the nature of all Merchandize and Commodities, were acquainted with the order and motion of all the Stars, knew how to take the Latitude and Longitude, and were perfectly read in the Art of Navigation, to what purpose would all be, if there were no Foreign Trade? we should have no Ships to navigate to those Countries, nor occasion to make use of those Languages, nor to make use of those Commodities; what would this Island be without Foreign Trade, but a place of Confinement to the Inhabitants? who (without it) could be but a kind of Hermites, as being separated from the rest of the World, it's Foreign Trade that renders us rich, honorable, and great, that gives us a Name and Esteem in the World, that makes us Masters of the Treasures of other Nations and Countries, and begets and maintains our Ships and Sea-men, the Walls and Bulwarks of our Country; and were it not for Foreign Trade, what would become of the Revenue (as one hath ingeniously obser-Les advantages ved) from fix to eight hundred thousand pounds for Cude commerce a stoms, and what would the Rents of our Lands be? The

thousands per annum, would dwindle into hundreds.

la East-India. Customs would totally fail, and our Gentlemens Rents of

VIII. Mer-

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I. Mer-

VIII. Merchants in England were always favourably provided for by the Common Law of this Kingdom. By the Ancient Laws of King Alfred it was provided, Defent Mirrour, cap. 1] due suit que nul Perchant Alien ne bantast Angleterre, sett. 3. fogfque aux quater Foires, ne que nul demeuraft in la terre Ethel. cap. 2. outer quarante jours: Mercatorum navigia, vel inimicorum quidem quacunque ex alto (nullis jactata tempestatibus) in portum aliquem invehentur tranquilla pace fruuntur, quinetiam si maris acta fluctibus, ad domicilium aliquod illustre, ac pacis beneficio donatum navis appulerit inimica, atque istuc nautæ confugerint, ipsi & res illorum omnes angust a pace potiuntur.

IX. Again, by the Grand Charter of our Liberties, they are provided for in these words: Omnes Mercatores Magna chartas nisi publice antea prohibiti fuerint, habeant salvum & securum cap. 30. conductum, exire de Anglia, & venire in Angliam, & morari, & ire per Angliam, tam per terram, quam per aquam, ad emendum vel vendendum sine omnibus malis tolentis per antiquas & rect as consuetudines praterquam in tempore guerra. Et sint de terra contra nos guerrina, & tales inveniantur in terra nostra in principio guerra, attachiantur sine damno corporum suorum, vel rerum, donec sciatur à nobis, vel à Capitali Justiciario nostro, quomodo Mercatores terra nostra tractantur, qui nunc inveniuntur in terra illa contra nos guerrina; & si nostri salvi sint, ibi alii salvi sint in terra nostra.

1. By which it is declared, That all Merchant-Strangers might be publickly prohibited to trade into this Realm,

be they in Amity, or otherwise.

2. All Merchant-Strangers in Amity, except fuch as be so publickly prohibited, shall have safe and sure conduct Addit sanon, in feven things.

1. To depart out of 2. To come into

3. To tarry in

4. By Water, and Land to go in, and through

5. To buy and fell.

6. Without any manner of evil Tolls.

By old and rightful Customs.

hoc nomine continentur simul alii opifices & artifices quorum quastus pacem amat, non bellum. Grotius de Jure Belli, lib. 3. cap. 11. S. 12.

England.

X. But concerning such Merchant-Strangers, whose Prince is in War with the Crown of England, if they are found

mercatores, quod non tantum de his qui temporariam in hostico moram agitant, intelligendum est, sed ut de subditis perpetuis; nam & horum vita ab armis aliena: est ac sub

Realm in his absence. Belli, Co 2. In-

Rot. Parliam. num. 55.

flit. fol. 58.

Rot. Vascon. 18 Ed. 2. m. 21.

4 H. 4. cap. 5. 5 H. 4. cap. 9.

* 8 H. 6. c.14.

11 H 7. cap. 14. Co. 2. Inft. fol. 742.

Leg. unic. Cod. ceat. in Leg. mercis 66. 6 in Leg. mercis 207. de verb. signif.

found within the Realm, at the beginning of the War, they shall be attached with a Priviledge and limitation, i.e. without harm of Body or Goods; with this limitation, un-* That is, the til it be known to the King, or his Chief Justice *, how Keeper of the Merchants of England are used and intreated in their Country, and accordingly they shall be used in England, the Et in Republica same being Jus Belli. But for Merchant-Strangers, that maxime confer- come into the Realm after War begun, they may be dealt vanda sunt jura withal as open Enemies, it being the Policy of England ever to entertain Merchant-Strangers fairly; in the 18. year of Ed. 1. in the Parliament Roll it is contained thus: (ives London petunt, quod alienigeni Mercatores expellantur 18 E. I. fol. 4. à Civitate, quia dicantur ad depauperationem Civium, &c. Responsio -- Rex intendit quod Mercatores extranei sunt idonei & utiles magnatibus, &c. & non habet Concilium eos expellendi. However, though great Immunities were granted them, yet they always found Sureties, that they should not carry out the Merchandize which they brought

XI. And at this day, if they bring in any Merchandize into the Realm, and fell the same for Monies, they are to bestow the same upon other Merchandizes of England, without carrying of any Gold or Silver in coyn, plate or mass out on forseiture; the principal reason of this was as well to preferve and keep the Gold and Silver within the Realm, as for the increase of the Manufactures; and the fame at this day extends as well to Denizens, so made by Letters Patents, as Strangers; however he may use the 7 Stat. 17 E.4. same in payment to the Kings Liege People, without c. 1. confirmed incurring the Penalty of the Statute of 4 H. 4. but yet in by 3 H. 7. 4.8. strictness of Law, ought not to receive * any Gold in payment.

XII. All Merchant-Strangers that shall be made Deni-22 H. 8. cap. 8. zens, either by the King Letters Patents, or by Act of I Eliz. cap. I. Parliament, must pay for their Merchandize like Custom and Subfidy, as they ought, or should pay before they were made Denizens.

XIII. Every one that buys and fells, is not from thence de nund. & Al- to be denominated a Merchant; but only he who trafficks in the way of Commerce, by Importation or Exportation; or otherwise in the way of Emption, Vendition, Barter, Permutation, or Exchange, and which makes it his living chants.

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to buy and fell, and that by a continued affiduity, or frequent Negotiation in the Mystery of Merchandizing: But those that buy Goods to reduce them by their own art or industry into other forms than formerly they were of, are c. ejiciens 88, properly called Artificers, not Merchants: Not but Mer-diff. chants may and do alter Commodities after they have bought them, for the more expedite Sale of them, but that renders them not Artificers, but the same is part of the mystery of Merchants; but persons buying Commo- Paul. de castr. dities, though they alter not the form, yet if they are fuch in Leg. eum ff. as fell the same at future days of payment for greater price de Inft. than they cost them, they are not properly called Merchants, but are Usurers, though they obtain several other names, as Ware-house Keepers, and the like; but Bankers,

XIV. The Wares, Merchandizes, Debts, or Duties that F. M.B. 117. E. Merchants have as joynt Traders, or Partners, shall not go 38. E. 27. Co. to the Survivor, but shall go to the Executor of him that on Littlet. fol. is deceased.

and fuch as deal by Exchange, are properly called Mer-

If two joynt Merchants occupy their Stock, Goods, and accrescendi inter Merchandize in Common to their common profit, one of Mercatores per them naming himself a Merchant, shall have an account beneficium comagainst the other naming him a Merchant; and shall mercii locum charge him as Receptor * denariorum ipsius B. ex quacunque * co. sup. Litt. causa, & contractu ad communem utilitatem ipsorum A. & B. fol. 172. lib. Inprovenient sicut per legem Mercatorian rationabiliter mon_ trat. fol. 17,18; strare poterit.

XV. And as the Law establishes security for their Estates, so it gives them other immunities in their Commerce; for if one Merchant draws a Bill of Exchange upon another, be it in-Land or out Land, (if it be by way of Martin versus Exchange) the acceptance of the Bill by the party shall R. 2. Cro. fol. 7. bind him to that party, to whose use the Money in the Bill is to be paid, and he may bring his Action in his own name, per Legem Mercatoriam.

And foit is if a third Perfon, that is a Stranger to the Vide tit. Ex-Bill, shall accept the same for the honour of the Drawer, it change. shall bind him as effectually, as if he upon whom the Bill was drawn had accepted it; and this by the Custom of Merchants.

XVI. All other Subjects are restrained to depart the Eee 2

mercatoriam jus

19 H. 7.

Tomlinfon qui

tam verf. Henry

de Vale, Pasch.

Exchequer.

Mich. 12. 13 Realm, to live out of the Realm, and out of the Kings Eliz. Dyer, fol. Obedience, if the King so thinks fit; but Merchants are 296. Pasch.23. not, for they may depart, and the same is no contempt, Eliz. fol. 375. they being excepted out of the Statute of 5 R. 2. cap. 2. And by the Common Law they might pass the Seas without

Licence, though not to Merchandize.

XVII. It was once conceived, that those Laws which were prohibitory against Foreign Goods, did not bind a Merchant-Stranger, but it was ruled otherwise: For in the Leagues that are now established between Nation and Nation, the Laws of either Kingdom are excepted; and therefore as the English in France, or in any other Nation in Amity, are subject to the Laws of that Country where they reside; so must they of France, or any other Country be subject to the Laws of England, when resident here; 36 Eliz in the and therefore if a French man imports any Points, Laces,

Belts, Hats, and the like, they are forfeited.

XVIII. The marking of Goods is of a great confequence, as in relation to the fetling the property of the Merchandize in the right Owner; and in Courts of Juflice, both the Civil Law and the Common Law hath a great respect to the same, therefore the use has been, that every particular Merchant hath his particular mark appropriated to him; by which means, if the person is of any value considerable, as in relation to Commerce, his mark is

presently known.

The Cutlers of London do give or appropria-Companies.

Every Merchant is to fet down his mark upon his Books of Account, wherewith his Commodities are marked; fo to each Mem- Companies and Societies have their particular mark : No ber a particular Merchant ought to use another mark, without leave first mark, which had of the party whose mark the same is; for as Flags are cannot be used the Ensigns that give conusance of the Nation whose Ships ted, without a they are, fo marks are to ascertain the Owners of their particular or- Property, without confusion or damage: And though to der and leave fet the mark of another man alters not the Property, yet of the Compa- it may work fuch a detriment as may be very mischievous; my and Party, and therefore by the Common Law of England, if J. S. shall maliciously set the mark of 7. D. upon his Goods, to the 2. Cro. fol.471. intent 7. D. shall or may be brought into any trouble, or put to any damage or charge, an Action of the Case will lye against 7. S.

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CHAP. VIII.

Df fadozs.

I. Factors, their qualifications generally considered, in reserence to their employment.

II. Of commissions, and the words in the same, that qualifie them in their employment.

III. If Commissions to Factors that limit their actions.

IV. Of a Factor that deals for feveral Merchants, of the obligations that oblige, and not oblige each other.

V. Of their power, confidered in reference to the dispensing with the Debtors of their Principals.

VI. Where the falle entry, or unfaithfulness of the Factor, subjects him to answer damage to his Principal; and of the like committed by the Principal, where to answer to the Factor.

VII. Of Goods remitted to Factors, and lost in their possession, who bears the missortune.

VIII. Bills of Exchange drawn on the Factor by the Principal, and accepted, but before day of payment the Principal becomes Bankrupt, whether the same must be paid.

IX. Of Freighting of Ships by a Faettor, where he is obliged to fee the same discharged.

X. Of the general rules to be used, touching the construction of their actions.

A Factor is a Servant, created by a Merchants Letters, and taketh a kind of provision called Factorage, such persons are bound to answer the loss, which happens by over-passing, or exceeding their Commission; but a simple Servant, or an Apprentice can only incur his Masters displeasure. The Spaniard hath a Proverb: Quien passa Commission, pier de Provision; He that exceeds his Commission, shall lose his Factorage: But time and experience hath taught them to know better things, for now it is: Subolca la paga, His Purse must pay for it. The gain of Factorage is certain, however the success of the Voyage proves; and it is the prudence of Merchants to chuse honest and industrious persons, for otherwise the Factor may grow rich, and the Merchant poor; the sirst being sure of his reward, the latter uncertain of his gain.

II. In Commissions they now generally insert these words: Dispose, do; and deal therein as if it were your own; by which the actions of the Factor are to be excused,

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though it turns to his Principals loss, because it shall be prefumed he did it for the bolt, and according to his difcretion.

III. But bare Commission to a Factor, to sell and dispose, will not enable him to trust, or give further day of payment; for in the due execution of his authority, he ought on a Sale to receive quid pro quo, and as he delivers one to receive the other; for otherwise by that means, as they may trust fix months, they may trust fixteen years: Nor by the virtue of that Clause, of Doing as if it were their own, may they trust out to an unreasonable time, as ten 9 Fac.B.R. Rot. or twenty years instead of one, two, three months, which 416. Barton & is the customary time for the like Commodities: And so Saddocks. Bolft. it was adjudged, where one had remitted Jewels to his Factor in Barbary, who disposed of the same to Mulleshack the Emperour, for a Sum certain to be paid at a time, which being elapsed, the Factor not obtaining it, was forced to make the fame good to his Principal.

> IV. Again, one and the fame Factor may act for feveral Merchants, who must run the joynt risque of his actions, though they are meer Strangers to one another; as if five Merchants shall remit to one Factor five distinct Bales of Goods, and the Factor makes one joynt Sale of them to one man, who is to pay one moity down, and the other. at fix months end; if the Vendee breaks before the second payment, each man must bear an equal share of the loss, and be contented to accept of their dividend of the Money

advanced.

But if fuch a Factor draws a Bill of Exchange upon all those five Merchants, and one of them accepts the same, the others shall not be obliged to make good the payment.

Mich. 17 7ac. versus Turner, Winch. 24, 25.

V. And as the authority and trust reposed in Factors is E. B. Van Heath very great, so ought they to be provident in their actions for the benefit of their Principals; and therefore if Factors shall give time to a man for payment of Monies contracted on Sale of their Principals Goods, and after the time is elapsed, they shall fell Goods of their own to such perfons for ready Cash (leaving their Principals unreceived) and then fuch men break, and become infolvent, the Fa-Gor in equity and honesty ought to make good the losses, for they ought not to dispense with the non-payment of their

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their Principals Monies, after they become due, and procure payment of their own to another mans loss; but by the Laws of England they cannot be compelled.

VI. Yet if Goods are remitted to a Factor, and upon arrival he shall make a false Entry at the Custom-house, or Levison versus land them without the Customer, whereby they shall in- Kirke, Trin. 7 cur a seisure or forseiture, whatsoever the Principal is en- fac. in B. R. damaged, he must inevitably make good, nor will such Lane's Rep. 65. general clause help him as above: But if a Factor makes his Entry according to the Envoice, or his Letter of Advice, and it falls out the fame are mistaken, if the Goods

shall be lost, yet the Factor is discharged.

And as fidelity, diligence, and honefly are expected from the Factor, fo the Law requires the like from the Principal, judging the act of one to be the act of the other; and therefore if a Merchant shall remit counterfeit Jewels to his Factor, who fells and disposes them for valuable confiderations, as if they were right, if the Factor receives any loss or prejudice thereby, by imprisonment or other punishment, the Master shall not only make good the damage to the Factor, but also render satisfaction to the party damnified; and fo it was adjudged, where one How was possessed of three counterfeit Jewels, and having Factors in Barbary, and knowing one Southern, a Merchant, was relident on the place, configns those Jewels to his Factor, who receiving them, intreated Southern to fell those Jewels for him, telling him that they were good Jewels; whereupon Southern, not knowing they were counterfeit, fold them to the King of Barbary for eight hundred pounds (they being worth really but one hundred pounds) and delivered the Money to the Factor, who Hill. 25 740. remitted the same to How; the King of Barbary not long B.R. Cro. 2. part, after finding himself cozened, committed Southern to pri- 490. Bridgman fon till he repaid the eight hundred pounds. Whereupon 126, 127. Pop-Southern coming for England, brought his Action against bam 143. not resolved in How, and had Judgment to recover his damage; for the that Book. Principal shall answer for his Factor in all cases where he is privy to the act or wrong: And fo it is in Contracts, if Hill. 43 Eliz. a Factor shall buy Goods on the Account of the Principal B.R. Petty's and (especially if he has used so to do) the Contract of the Fa Soame's Case, ctor will oblige the Principal to a performance of the bar- Goldsbr. fal. gain,

VII. When Factors have obtained a Provenue or profit for their Principal, they must be careful how they dispose of the same, for without Commission or order they must be responsible. Goods remitted to Factors, ought in honefty to be carefully preserved, for the trust is great that is reposed; and therefore a Factor robbed in an Account. brought against him by his Principal, the same shall dif charge him *. And so it is if a Factor buys Goods for his

* Southels Cafe.

coke, lib. 4. fol. Principal, which afterwards happens to be damnified, the Principal must bear the misfortune: But if a Factor shall dispose of the Goods of his Principal, and take Money that is false, he shall there make good the loss; yet if he receives Monies, and afterwards the fame is by Edict or Pro. clamation lessened in value, the Merchant, and not the Factor, must there bear the loss.

Again, in Letters of Credit, the Factor must be fure to fee, whether the Commission is for a time certain, or to fuch a value, or not exceeding fuch a Sum, or general, in

which he must have a careful eye.

VIII. A Merchant remits Goods to his Factor, and about a month after draws a Bill on him, the Factor having Effects in his hands, accepts the Bill, then the Principal breaks, against whom a Commission of Bankrupts is awarded, and the Goods in the Factors hands are feized; it has been conceived, the Factor must answer the Bill notwithstanding, and come in a Creditor, for so much as he was enforced by reason of his acceptance to pay.

IX. If a Factor enters into a Charter-party with a Master for Freightment, the Contract obliges him; but if he lades aboard generally the Goods, the Principals and the Lading are made liable, and not the Factor, for the Freight.

ment.

The Principal orders his Factor, that as foon as he hath loaded (he having Monies in his hand) to make an Affurance on the Ship and Goods, if the Ship happens to mifcarry by the Custom of Merchants, he shall answer the fame, if he hath neglected his Commission; so it is, if he having made an Affurance, and lofs hath occurred, he ought not to make a Composition without orders from his Principal.

X. Generally the actions of Factors do depend on Buying, Selling, Freighting, and all other the Heads that have been

Quere, If equity may not relieve in such case.

treated

treated in the Second Book, by which their employment is univerfal in matters Maritime and of Commerce; and the questions which would arise touching the same, if treated on, would be in infinitum: However these are to be the Standard rules, which should govern their actions, viz. honesty, faithfulness, diligence, and observing of Commission, or Instructions, which being considered, and weighed by those that shall be Judge of their actions, a right understanding and determining of the matters, arising between them and their Principals, would soon be ended.

But those forts of Factors that have wanted those things, feldom or never render any other account, but long and tedious Chancery-Suits; by which they not only have endamaged their very Trade, but seek to marry their Principals to a double affliction, by obliging them to sue either

a Beggar, or that which is worfe, a naughty man.

On the other hand, Factors that behave themselves worthily and prudently in the fervice of their Principals, ought after their tedious fervice be numbred amongst those that justly challenge that worthy denomination of Merchant: And fuch was he who never made breach of Commission, in the service of his Principal, but once; that was, when Wines were committed to him to dispose of, but the price (by reason of a glut) fell, advice being given to the Principal of the same, who immediately in passion writes to his Factor to take a hammer and knock out the heads; but the Factor confidering (that leave must be given to lofers to fpeak) knew better things, and kept the Goods, fold them for their full value; and when Accounts were to be made, instead of bringing to the Account of Wines, their heads knockt out per order; worthily brought per contra, fold at their intrinsick value. Such faithful Ministers, I say, justly deserve that of our Saviour, Well done, &c. and to be no more called Factors, but Merchants.

CHAP.

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CHAP. IX.

Of the Laws of Mature and of Mations.

I. Of the variety and contrariety of humane actions, and from whence they fpring.

II. Of the difficulties that happen in the obstructing our inquisition, in finding that which is lawful.

III. Humane Laws from whence they flow, and wherefore the Laws of Nature are above ours.

IV. No man naturally more a Judge than another of Natures Laws.

V. Natures Laws are instituted for inward goodness and virtue; but State-Laws for quiet and repofe.

VI. Of punishment required by Kings against those that violate the Laws of Nature or Nations, though the Same touch not them , nor their Subjects, and of punishing an

VII. Of punishing an equal, where that right fails, and the reasons of the Same.

VIII. Subjects ought not to feek ju-Rice in the Territory of another Prince, but in their own, unles the Defendant become Fugitive.

IX. Of Kingdoms equal in Power cannot be commanded, but intreated, may be to execute the Judgment of another by the Law of Nations.

X. That such power of executing the Judgments or Decrees of any Foreign Nation, extends not to those of life or Honour.

XI. Of executing the Judgments given in a Kingdom absolute, in another that is annexed by Conquest; and of the difference of that, and one by Union.

XII. Where that right fails in Plantations, and the reasons of the

I. Lain reason shews us, that Natural and Mathematical causes have more certitude than Civil; for Nature is always uniform and alike in its operations: Hence fire always burns, and never wets; a stone in the Air naturally tends downwards, and never stays in the middle. In Mathematical causes ordinarily the forms are such, as have no middle interposed, as between even and odd; there is no medium parti participationis, between a right line and a crooked; there is no middle fort of line; thus two and two always make four.

II. But civil and humane actions, proceeding from a mudum in his que table and various Principle (the Will *) cannot always be alike or uniform: And besides the will within, humane actions without, are subjected to different circumstances, pravatis. Arift and to infinite encounters; by reason of which their exceffive

* In auid naturale fit feltanbene secundum naturam se habent, non in de-Polit: 1. 5.

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ceffive number, they cannot be foreseen while men are making Laws: Hence we may understand wherefore it is faid. Omnis definitio in jure est periculofa; and that summum Tus at some time may be found summa injuria; as to render a man his Sword, when he is actually mad, &c. And as circumstance hath power to change the matter. so in the form of the action, it leaves in the middle a latitude. fometimes inclining to one extreme, fometimes to another.

For Example, betwixt that which by precept we are commanded ever to do, and that which we are commanded never to do, is placed that which is lawful for us Non ideo id Denow and then to do, or not to do, in matters of our own um velle, quia right, fo far as they feem expedient, or not expedient for justum est, sed juus: Thus Foseph is called a just Man, because he thought of standing is due in Law) divorcing himself from Mary, though upon circumstances quia Deus vohe would not, &c. But that which perplexes us all here luit. Anaxaris, that this licitum leans fometimes more to the one hand, chus apud Plufometimes more to the other, fometimes more to that tarchum in Awhich is absolutely good, sometimes more to that which lexandro. is absolutely bad; from whence grow scruples and doubtings, whether in fuch twilight we really participate more of light than of darkness, that is, more of good than of bad.

III. Humane Laws grow most out of these middle things, ex medits licitis; and upon right examination we find, that a man hath nothing else to dispose, for we (poor Vasqu. 11. confubordinate Vessels) cannot so much as deliberate de abso- trov. 54. 4. lute debitis, and absolute illicitis, for they were in force before Man, Prince or People were in being, and God him- Grotius de Tire felf cannot now alter them, they flowing intrinfecally, Belli as Pacis, either from his Sanctity, Wisdom, and Justice, as he is a 1.1. G.I. S. 14. Creator and Governour; or elfe they flow from Nature, whose rule (according to Gods making it by that which is in himself) is right reason and honesty. This uprightness of Nature, together with that obligation we have to be subject to it, was not a moment after us, and therefore we could not determine any thing about it; for which cause we have not a legislative power to alter or diminish any of Natures Laws.

IV. S. Paul tells us, of those who without any after knowledge of Gods revealed will or Laws to man, were condemnable

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by those of Nature alone in the punishing the Breakers thereof. No man is naturally more a Magistrate than another, otherwise what meant Cain, when after his murder he

cryed, Wholoever (hall find me, will kill me?

V. And though humane Laws remember us of those things, yet it is not as if they gave their original and primary force of obliging; yea reason of State is not busied so much about inward piety and vertue, as it is about publick quiet and repose, or those actions which regard another mans receiving right or wrong: and hence it is, that great prodigality is not fo feverely punished as a little robbery; and that malus homo potest effe bonus Cives, the reason is, because though he may do himself wrong in his own rights, yet he may always do other men right in theirs; neither is there any clear reason, wherefore those lesser fins and impieties should be punished by any but God, who is wifest to know them, justest to weigh the merit of them, and powerfullest to punish them.

This is the state of God's, and of Nature's Laws, to which we are all equally obliged, but our floating and circumstantiated Laws are only to give a rule for an equal and mutual community in things, which God and Nature gave

VI. Hence it is, that Kings and fuch as have equal

power with Kings, have a right to require punishment,

us to dispose of as we would our selves.

not only for injuries committed against themselves or their Subjects, but for them also that do not peculiarly touch themselves, whatsoever the persons that do unmanly violate the Law of Nature or of Nations, for the liberty by punishments to provide for humane Society (as hath Grotius de Jure been already mentioned) was in the hand of every man; but after Commonwealths and Courts of Justice were ordained, it resided in the hand of the highest Powers, not properly as they are over others, but as they are under none: For subjection to others hath taken away that right; yea fo much more honest it is to vindicate other mens injuries than our own, by how much more it is to be feared, that a man in his own by too deep a refentment may either exceed a measure, or at least infect his mind; however, this right of punishing an equal remains still in those places where the people remain as in great Families, and not in Cities, or under some Government; and there-

Belli ac Pacis, lib.2. cap. 21. r,

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fore those that have now possessions of any parts of the New World, or American Isles, till they have either voluntarily fubmitted to a Government, or put them and their discovery into the hands or protection of some Prince that may exercise power, there remains the old and natural right of punishing for offences: So likewise where perfons shall be affaulted by Pirates on the Seas, if they be overcome, they may be immediately executed by the Law of Nature; for otherwise there would be a failure of power to punish such: besides, the old natural liberty remains Vide Chap. Piin all places where are no Judgments; fo where they are racy, \$.11, 12. taken and brought to a Port, and the Judge openly refuses the Tryal of them; or that the Tryal of them cannot be had, without an apparent detriment and loss to the Captors, Justice may be done upon them by the Law of Na. Leg. extat. D. ture.

VII. Two Pirates refolving to affault, and rob the next Vessel they meet with, (not knowing each others condition or delign) encounter, and the one happens to be overcome by the other; the question is now, whether the above-mentioned right fo far remains, as that the stronger may execute him whom he hath overcome? Right reason Qui non reddie dictates, that the evil doer may be punished, not who faciendo quod should punish him; but that Nature sufficiently sheweth, debet, reddet pathat it is most convenient to be done by him that is Supe- bet Philo, peccariour; yet doth it not demonstrate this to be necessary, re dum festinaexcept Superiour be taken in that sense, that the evil doer tis, ad panas sebe thought to have made himself thereby inferiour to any rendas festinaother, and to have as it were degraded himself from the tis. order of men into the number of bealts subject to no man, and fuch are Pirates, who have no other denomination but Night-wolves, or Beafts of Prey. By Nature it is ordained, That the better command the worse: And Aristotle Arist.7.Pol.14. faith, The worse are provided for the use of the better, as well in Naturals as in Artificials. It follows hence, that at least a guilty person ought not to be punished by another equally guilty, to which purpose is that Saying of Christ, Whosoever of you is without sin (that is such sin) let him throw the first stone. Pertinent is that faying, The Sentence can have no authority, where he that judgeth is to be condemned: From whence it follows, that the right of punishing in fuch case at fuch time ceases.

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VIII. On the other hand, Subjects that have just cause of Action, and inhabit under their own Soveraign, ought not to wave his Justice, and fly into the Territory of ano. ther, but ought to feek it in their own, unless the De. fendant becomes Fugitive. One Richard Hieron being a Merchant of London and Liege-man of the King, and born in England, commenc't a Suit against 7. Walden Major of the Staple of Calice and other Merchants of the Staple, caufed them to be arrested in Flanders in the Court of the Duke of Burgundy held in Bruges for certain injuries sup. posed by them to be made within the Jurisdiction of the King of England at Calice, and after the Defendants did appeal to the Parliament at Paris, and were there dismit by a Judicial Sentence, for that they had no Cognizance or ground to inquire or examine matters committed within the Jurisdiction of the King of England, and by his Subjects there inhabiting in a Foreign Court, the Record does make mention, that this was an act fo derogating from the Law, and of fo high a contempt, that it was enacted, Rot. Parl. 17 E. Due briefe de Proclamation istera, lup commaundant a 3. num. 26. ci- furceafer fon bir actions, g que s'il ni apres fue les dits

Rot.Parl. 17 E. 3. num. 26. cited in Rolls Abridgment, tit. Prerogative, fol. 176. Due briefe de Proclamation istera, lux commaundant a surceaser son dir actions, a que s'il ni apres sue les dits Defendants hors del Kealm d'Angleterre pur ascun matter determinable under the Jurisdiction and Obedience of the King of England ou l'on il adjurisdiction, the Judgment given—— donque il serra, ac. he shall be put out of the Protection of the King of England, and forseit all his Lands, Tenements, Goods, and Chattels, and that no pardon shall be to him available.

IX. Yet Kingdoms which are equal in power, and having no dependance on each other, cannot be commanded nor corrected of another; but if there be a question, to execute the Decree or Judgment of one in the Territory of the other, there may issue forth a Commission of Entreaty under the Seal of that Court where the Judgment was given, or at least under the Great Seal of the Prince, directed to the Judges in that place where the Defendant is resident, and the Judge to whom the said Commission is directed may award Execution, according to the Law of Nations: And so it was adjudged, where one having recovered a Debt before the Governour of Freisland, the Desendant upon that sled for England, the Governour, at the request of the Plaintiff, issued forth his Commissiond Request

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Request, directed Omnibus Magistratibus infra Regnum Anglia, 5 Jac. in B. R. rogans; to make Execution of the faid Judgment; upon Rolls Abridgwhich the Judge of the Admiralty in England iffued forth ment, wiers an Execution of that Sentence, and the Defendant was Habeas Corpus, taken, upon which he brought his Habeas Corpus, and ad- fol. 530. judged the Sentence well executed by the Laws-of Nations, and according to the Common Law of this Realm.

So likewise if a Dutch-man takes up Goods at the Port of London, and gives a Note under his hand for the payment of the same, and then flyes into Holland, the Vendor may apply himself to the Lord Mayor of London; and upon proof of the delivery, and the Sale of the Goods, the Lord Mayor making a Certificate of the same, and sending it under the City-Seal directed, as above, they of Holland

will and do execute the fame upon the Party.

Herein this last Case differs from the first; for by the former, if there should fall a question about the interpretation of the Judgment or Sentence, the fame cannot be done, for they are not to examine the same; and the reafon is, lest the Stranger be induced at another time to do the like, and fo dissolve the Judgments whereof they should demand the Execution, the which would be done more through jealousse of the State, than for any injustice in them: Besides, the Judgments or Sentences, which are matters of Record and of the greatest security in a Kingdom, the prefumption that they were justly given, shall always be understood.

X. But in the latter the same may be examined, that is, the Merchant may be heard as to his legal defence, either to the lessening or discharging the debt or damage, but against the testimony certified, no objection can be made.

but the same is admitted as legally proved.

But if there be a question of honour or life, there they may not execute the Judgments of Foreign Judges, especially if they have not known the merit of the causes or seen the Informations, or heard the Witnesses; but more especially in England, for there can in no respect whatsoever the life of a man (let his offence be never fo hainous) be brought to punishment without a legal Tryal*, and * coke4- Inflit, that by the producing of Witnesses viva voce to his face, fol. 38. yet Princes for the respect they bear each other, and for the Good of Justice, though they cannot at the bare re-

Soto de Fuft. & Fure, 1.5. qu. 1. judicamus effe paucos aliquos mala ferre, quam immensam multitudinem, Zonaras. * Pasch. 24 Car. 2. in B. R. in Hibern. inter warde and

Moore.

quest of the Judges of another Prince, put them to death; yet they may for exemplary punishments (which ought to be made upon the places where the fact was committed) yield the natural Subject to his natural Prince, unless the Prince to whom the Fugitive is fled, finds that he is unjust-Art. 7. Satius ly pursued, for in such cases he is not bound to yield them: yea, he is forbidden by the Law of God to restore a bondman, which is fled into another mans house, to avoid the

fury of his Master.

XI. And as the same is in cases Foreign, so likewise in those Estates that are under the Crown of England; and therefore if a man recovers against * 7. S. in the Kings Bench in England, and then the Defendant flies over into Ireland, the Judgment may be certified over into the Chancery in Ireland, and they may by Mittimus fend it into the Kings Bench there, and they may award execution, or otherwise the party may bring his Action of Debt on the fame; fo the like has been done for Decrees given in the Chancery in England, which have been exemplified under the Great Seal, directed to the Kings Lieutenant, for the putting the same in execution there; but in no case a Judgment given in England may be certified over under any other Seal, but that of the Great one.

But in Scotland it is otherwise; for that is a Kingdom absolute, and not like Ireland, which is a Grown annexed by Conquest, but the other is by Union; and though they be united under one Prince ad fidem, yet their Laws are distinct, so as if they had never been united; and therefore the execution of the Judgments in each other, must be done upon Request, as above, and that according to

the Laws of Nations.

XII. But in Colonies or Plantations, which are reduced into the condition of great Families, have not this Right of Requesting, for they are governed by the Laws prescribed by the Soveraign of the fame, who may fet Juisdictions, and make them places priviledged not to have the persons attached or arrested in any other places, but within their own bounds; fo likewise upon their first forming or Institution, may so declare that for any Debt or Contract made or done in any place but in that of the fame Plantation, they shall not be impleaded; and therefore in Virginia at this day, if a man contracts a debt in England, flies

Book III. and of Mations.

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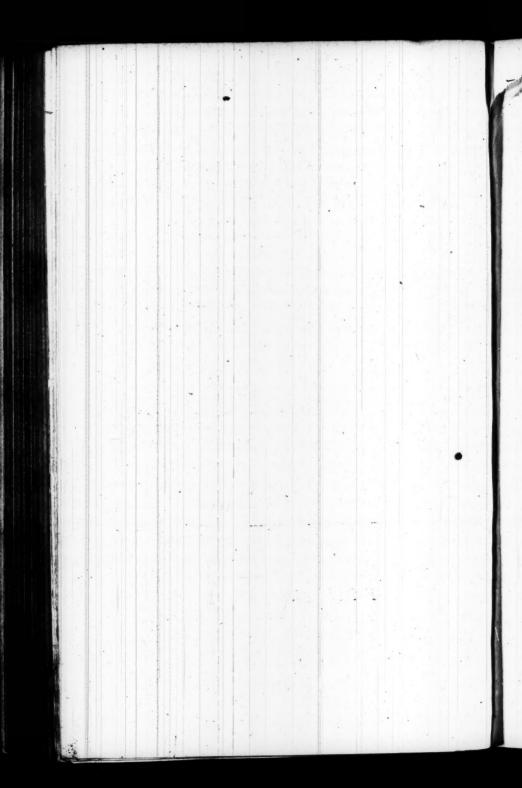
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flies to the fame, he cannot be there impleaded: But if a man takes up Goods, and carries the same over thither. there he may be fued in the place; so likewise if it can be proved he carried over the money borrowed, and this amongst others of the Laws and Constitutions of those Plantations, is preserved inviolably, the same being as it were a pledge and general fafety, which is given to those Inhabitants, that shall refort thither, and there plant themselves for the good of the place; and although those that thither fly, by reason of great and unreparable loss. have contracted debts far beyond their ability to fatisfie, a failure of which, in strictness of Law, may (if the Creditor pleases) oblige their Bodies to Imprisonment; yet doth it not thence follow that the same ought to be exacted; for though the Carcas of man may gratifie the revenge of the Creditor, yet it never can pay the debt; wherefore if those ends by themselves in a moral estimation be not necessary; or, if other ends on the opposite part occur, not less profitable or necessary; or, if the ends proposed by Imprisonment may be attained another way, it will then follow that if there be nothing of obligation on the Debtors part, to render himself a Prisoner to the Creditor, that then if the same can or may be avoided by flight, the same in conscience may be done; according to that of Cicero *, It was not fit perhaps to dismis him being * Ad Quintum brought to Judgment, but that he should be inquired after, and Tract. 1. 21. brought to Judgment, was not necessary.

FINIS.



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